The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. Government, the U.S. Department of the Navy or the Naval War College.
SITUATION I.

TERMINATION OF LIABILITY FOR BREACH OF BLOCKADE.

There is a war between the United States and State X, a South American State. A British tramp steamer, the Warren, which sailed from a Russian port with a cargo of wheat, runs the blockade maintained by the United States with reasonable efficiency before port M of State X. The Warren in ballast runs out through the blockade, sails to St. Thomas and takes a cargo for Bremen.

While the blockade of port M is still maintained, the commander of a war ship of the United States, knowing the facts, but not pursuing the Warren, comes upon the Warren on the North Sea, outside neutral jurisdiction.

What action should he take?

SOLUTION.

In accord with the prevailing American and British opinion and practice, and in the absence of instructions or other good reasons to the contrary, the commander of the war ship of the United States should capture and send the Warren to the nearest convenient prize court of the United States.

NOTES ON SITUATION I.

Historical.—The prohibition of trade with the enemy by proclamation has been common for centuries. There are proclamations of the thirteenth century containing such prohibitions. These proclamations were in the be-

Note.—In the following international-law situations all States are supposed to have ratified the conventions of the Second Hague Peace Conference, unless the name of the State is mentioned. In such case attention is paid to the fact of ratification, failure to ratify, or conditional ratification.
beginning more frequently issued to the subjects of the state itself, later to all. Sometimes there was a mingling of what would now be covered by proclamations of blockade and neutrality proclamations.

Actual blockade, however, is one of the measures common in early maritime wars. The propriety of this measure has been generally recognized. The objections to the measure have usually arisen from attempts to extend the practice in such a manner that it unduly bears upon neutrals.

Dutch ordinance of 1630.—One of the earliest definite statements of the extension of the penalty for violation to the completion of the voyage is found in a resolution of the States-General of the United Provinces, bearing date of June 26, 1630:

A l’égard du second point, Leurs Hautes Puissances déclarent, que les vaisseaux & marchandises neutres seront aussi confisqués, quand il conservera par les lettres de Cargaison, Connoissemens, ou autres Documents, qu’ils ont été chargés dans les ports de Flandres, ou qu’ils sont destinez d’y aller, quand même on ne les aurait rencontrez que bien loin encore de là, de sorte qu’ils pourroient encore changer de route & d’intention. Ceci étant fondé sur ce qu’ils ont déjà tenté quelque chose d’illicite, et mis en œuvre, quoi qu’ils ne l’aient pas achevé, ni porté au dernier point de perfection, à moins que les maîtres & les propriétaires de tels vaisseaux, ne fussent voir dûment qu’ils avaient désisté de leur propre mouvement de leur entreprise & voyage destiné, & cela avant qu’aucun vaisseau de l’Etat les eût vu ou poursuivi, & que ceux-ci trouvassent la chose sans fraude: ce qu’on pourra juger en examinant la nature de l’affaire par des conjectures, les circonstances & l’occasion.

3. A l’égard du troisième point, Leurs Hautes Puissances déclarent, que les vaisseaux revenant des ports de Flandres (sans y avoir été jetées par une extrême nécessité) & quoique rencontrez loin de-là dans le Canal ou dans la Mer du Nord, par les vaisseaux de l’Etat, quand même ils n’auroient pas été vus ni poursuivis par ceux-ci en sortant delà, seront aussi confisqués, à cause que tels Navires sont censez avoir été pris sur le fait, tant qu’ils n’ont point achevé ce voyage, & qu’ils ne se sont point sauvés dans quelque port libre, ou ayant fait à un Prince neutre. Mais ayant été, comme il a été dit, dans un port libre, & étant pris par les vaisseaux de Guerre de l’Etat dans un autre voyage, ces vaisseaux & marchandises ne seront point confisqués; a moins qu’ils n’aient été en sortant des ports de Flandres suivis par les vaisseaux de Guerre, & poursuivis jusques dans un autre port que le leur, ou celui de leur destination, & qu’en sortant de nouveau de-là, ils ayent été pris en pleine Mer. (Robinson, Collectanea Maritima, 165.)
Speaking of this rule of 1630, Kleen says:

La règle inaugurée en 1630, qui augmentait ainsi outre mesure la répression, fut bientôt abandonnée par les puissances excepté l'Angleterre. Des tribunaux et des publicistes anglais ont persisté—conformément à l'ancien système d'entendre la culpabilité aux deux côtés de l'occasion et du fait, à l'intention et à la destination du voyage avant et à sa continuation après—à faire valoir qu'une violation de blocus peut être poursuivie non seulement sur la place et au moment de l'acte, mais avant et après, durant tout le voyage du navire, quand même l'action ne serait pas encore consommée ou qu'elle serait déjà passée. Un navire, censé vouloir forcer un blocus, ou qui l'a depuis longtemps forcé, se trouve par cela in delicto durant tout le cours du même voyage. Il peut donc être pris, non seulement dès son départ pour les lieux bloqués et partout en chemin (droit de prévention), mais encore en revenant de ces lieux, à cause soit de l'entrée soit de la sortie, tant qu'il n'a pas encore atteint la fin définitive de son tour, et cela, lors même que l'infractio n'a pas été empêchée sur les lieux mais qu'elle a été tolérée par negligence, et qu'aucune poursuite n'a été faite immédiatement après l'action (droit de suite). Et, bien que le navire ne puisse, durant tout ce temps, être saisi dans un port ou une eau neutres, son entrée dans leurs limites n'exclut pas la poursuite ultérieure; celle-ci se fait même indépendamment des motifs du refuge dans les dites limites, n'importe que ce refuge ait eu lieu pour éviter la saisie ou par quelque autre raison: pas même un cas de détresse n'y fait exception. À la sortie, il peut être chassé et pris, malgré tous les arrêts en ports neutres, et même s'il n'a pas été poursuivi avant. La fin du voyage peut seule y mettre un terme. (I Kleen, La Neutralité, 638.)

British decisions.—The case of the Frederick Molke, decided in 1798 by Sir William Scott, involved both ingress and egress when a port was blockaded.

Several questions have been raised respecting the property, the previous conduct of the vessel, the legality of this sort of trade, and the actual violation of a blockade. I shall first consider the last question, because if that is determined against the claimant it will render a discussion of all other points unnecessary.

First, then, as to the blockade. These facts appear in the depositions of the master, "that on his former voyage he cleared out from Lisbon to Copenhagen, but was really destined to Havre if he could escape English cruisers; that he was warned by an English frigate, the Diamond, off Havre, not to go into Havre, as there were two or three ships that would stop him; but that he slipt in at night and delivered his cargo." It is therefore sufficiently proved that there were ships on that station to prevent ingress, and that the master knowingly evaded the blockade; for that a legal blockade did exist results necessarily from
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these facts, as nothing farther is necessary to constitute blockade than that there should be a force stationed to prevent communication, and a due notice or prohibition given to the party.

But it is still farther material that this blockade actually continued till the ship came out again. It is notorious indeed that Havre was blockaded for some time, and although the blockade varied occasionally, it still continued; for it is not an accidental absence of the blockading force, nor the circumstance of being blown off by wind (if the suspension and the reason of the suspension are known), that will be sufficient in law to remove a blockade.

It is said this was a new transaction, and that we have no right to look back to the delinquency of the former voyage; and a reference is made on this point to the law of contraband, where the penalty does not attach on the return voyage. But is there that analogy between the two cases which should make the law of one necessarily or in reason applicable to the other also? I can not think there is such an affinity between them; there is this essential difference, that in contraband the offense is deposited with the cargo, whilst in such a case as this it is continued and renewed in the subsequent conduct of the ship.

For what is the object of blockade? Not merely to prevent an importation of supplies, but to prevent export as well as import, and to cut off all communication of commerce with the blockaded place. I must therefore consider the act of egress to be as culpable as the act of ingress, and the vessel on her return still liable to seizure and confiscation.

There may indeed be cases of innocent egress where vessels have gone in before the blockade, and under such circumstances it could not be maintained that they might not be at liberty to retire.

But even then a question might arise if it was attempted to carry out a cargo, for that would, as I have before stated, contravene one of the chief purposes of blockade.

A ship then, in all cases, coming out of a blockaded port, is in the first instance liable to seizure, and to obtain release the claimant will be required to give a very satisfactory proof of the innocency of his intention. In the present case the ingress was criminal and the egress was criminal, and I am decidedly of opinion that both ship and cargo, being the property of the same person, are subjecto to confiscation. (1 C. Robinson, Admiralty Reports, 86.)

In the case of the Welvaart van Pillaw, Sir William Scott rendered an early decision (July 19, 1799) in regard to a ship that had passed the blockading forces:

Another circumstance on which exemption is prayed, is, that she had escaped the interior circumvallation, if I may so call it, that she had advanced some way on her voyage, and therefore that she had in some degree made her escape from the penalties. I can not accede
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to that argument; if the principle is sound that a neutral vessel is not at liberty to come out of a blockaded port with a cargo, I know no other natural termination of the offense but the end of that voyage. It would be ridiculous to say, “if you can but get past the blockading force you are free”—this would be a most absurd application of the principle. If that is sound, it must be carried to the extent that I have mentioned; for I see no other point at which it can be terminated. (Vide, Bynkershoek, Q. J. P., lib. i. ch. 11.) Being of opinion that the principle is sound, I shall hold that if a ship that has broken a blockade is taken in any part of that voyage, she is taken in delicto, and subject to confiscation. (2 C. Robinson, Admiralty Reports 128.)

In the case of the General Hamilton in 1805, Sir William Scott said in regard to the claim that the vessel had completed her voyage when compelled to enter a port in distress:

Another distinction is, that the vessel had terminated her voyage, and therefore that the penalty would no longer attach. It is true that she had been driven into a port of this country by stress of weather; but that is not described by the master as forming any part of the original destination, which is represented to have been to New Orleans. It is impossible to consider this action as any discontinuance of the voyage or as a defeasance of the penalty which has been incurred. (6 C. Robinson, Admiralty Reports 61.)

Dupuis’ opinion.—Dupuis interprets the English practice as follows:

Les Anglais considèrent que le voyage entier, depuis le port bloqué jusqu’au port de destination, constitue une infraction ininterrompue aux devoirs de la neutralité, une violation flagrante et continue de blocus. D’où il suit que tout croiseur belligérant a qualité pour exercer le droit de suite, c’est-à-dire pour opérer la capture du navire forceur de blocus, en quelque point qu’il le rencontre; il n’est pas besoin, pour le prendre sur le fait, que le capteur appartienne à l’escadre de blocus; quel que soit son emploi, il peut et doit réprimer l’acte hostile qui se poursuit devant lui et qui ne prendra fin qu’à l’arrivée au port de destination.

Que faut-il entendre par le port de destination? La question est de grande importance; les Anglais la résolvent d’une manière rigoureuse. Le port de destination sera habituellement le port désigné dans la charte-partie comme le point final du voyage, sans qu’il y ait lieu de tenir compte des ports intermédiaires où le vaisseau pourrait relâcher, soit pour prendre ou laisser quelque cargaison, soit pour chercher un abri contre le mauvais temps; à plus forte raison, ne reconnaîtrait-on point la qualité de port de destination au port où la poursuite ou la crainte de l’ennemi engagerait le navire à demander
un refuge. Cette solution rigoureuse est d’ailleurs la conséquence logique de la conception anglaise du blocus; puisque le blocus interdit toute communication, tout voyage maritime des lieux bloqués à un port quelconque, l’infraction se mesure au mépris de cette interdiction; elle comprend donc tout le trajet qu’on se propose jusqu’au dernier port où doivent être déchargées les marchandises prises aux lieux bloqués. (Le Droit de la Guerre Maritime d’après les Doctrines Anglaises Contemporaines, p. 220.)

Pradier-Fodéré reviews the English position, citing the early practice of Holland:

Il est une autre fiction dont on constate l’existence, en Hollande, dans la première moitié du XVIIe siècle, dont Bynkershoek a parlé comme d’un droit universellement reconnu, qui a trouvé un terrain très favorable en Angleterre ainsi qu’aux États-Unis d’Amérique, et qui est due à la haine jalouse des belligérants contre les neutres et au besoin de donner une sanction aux blocus fictifs: c’est ce qu’on a nommé le droit de suite. Ce prétendu droit repose, en effet, sur une fiction qui fait considérer comme étant en flagrant délit, pendant toute la durée de son voyage de retour, jusqu’au port de sa destination, et pendant toute la durée de sa traversée, tout navire de commerce neutre qui a violé de fait un blocus, soit en entrant, soit en sortant, alors qu’il n’avait pas le droit de sortir. Le soi-disant droit de suite est donc le droit que les belligérants s’arrogent de poursuivre les navires neutres de commerce violateurs d’un blocus régulier, et de les capturer, jusqu’au port de leur destination définitive, pendant toute la durée de leur traversée, en quelques parages qu’ils soient rencontrés. Le plus ancien acte dans lequel on en trouve la trace serait l’édit hollandais de 1630; il a été affirmé aussi par la convention anglo-hollandaise du 22 août 1639, lors du blocus fictif mis par ces deux Puissances sur les côtes de la France.

Le système de l’édit de 1630 prévoit deux situations différentes: 1° Les navires neutres de commerce, violateurs d’un blocus, n’ont pas été vus et poursuivis par les navires bloquants à leur sortie du port bloqué; 2° ces navires ont été vus et poursuivis. Dans la première hypothèse, ils peuvent être arrêtés en pleine mer (et seront confisqués) tant qu’ils n’ont pas atteint un port de leur pays, ou qu’ils ne se sont pas réfugiés dans quelque port neutre; dans la seconde hypothèse, leur entrée dans un port neutre ne les met pas à l’abri pour plus tard de la saisie en haute mer et de la confiscation: la poursuite continuera après leur sortie du port neutre, et ils ne seront à l’abri de la saisie que lorsqu’ils auront atteint leur port de destination, ou quelque autre port de leur pays. Les Anglais ont aggravé ce système. À leur point de vue, les navires violateurs sont saisissables et punissables aussi longtemps qu’ils n’ont pas atteint leur destination finale, sans qu’il faille distinguer s’ils ont été poursuivis ou non par les croiseurs des belligérants; le délit de violation continue jusqu’à l’arrivée
à cette destination, qui n’est autre que le port désigné par la charte-partie comme le point où doit se terminer le voyage, et n’est jamais effacé par une simple interruption dans le trajet, par une relâche dans un port intermédiaire, volontaire ou même forcée. La violation du blocus ne prend donc pas fin dès que les lignes ont été franchies avec succès; le voyage entier, depuis le port bloqué jusqu’au port de destination, constitue une infraction ininterrompue aux devoirs de la neutralité, une violation flagrante et continue du blocus; tout croiseur belligérant faisant partie ou non de l’escadre bloquante, a qualité pour opérer la capture du navire forceur de blocus, en quelque point qu’il le rencontre; tout croiseur anglais, quel que soit son emploi, peut et doit réprimer l’acte hostile qui se continue ainsi devant lui et ne prendra fin qu’à l’arrivée au port de destination. (8 Droit Int. Public, sec. 3143.)

Later in the same section Pradier-Fodéré says of the English and American practice:

Il est certain que le délit de rupture de blocus n’est pas un délit de droit pénal mais de droit international, c’est-à-dire un manquement au devoir de non-immixtion dans les hostilités, mais la définition du flagrant délit donnée par le code d’instruction criminelle français lui convient, et dans tous les cas un tel manquement à un devoir international ne peut autoriser la saisie qu’au moment où il se produit. Raisonnablement, même, comment admettre que le flagrant délit dure pendant tout un voyage, souvent très long, alors surtout que le coupable peut n’avoir été, ni vu, ni aperçu, au moment du délit, et que, pour avoir connaissance du fait, il a pu être nécessaire de monter à son bord afin de chercher la preuve dans ses propres papiers. Il ne peut y avoir de flagrant délit que dans le cas où le navire neutre, aperçu au moment de la violation du blocus, est saisi sur les lieux et au moment même, ou bien a été poursuivi à vue par un des bâtiments bloquants; dans ce cas le flagrant délit durera aussi longtemps que la poursuite à vue pourra être continuée, et cessera dès que le navire neutre aura cessé d’être en vue, ou dès qu’il sera entré dans un port neutre, ou non, quelconque. Voilà ce que suggèrent le bon sens et la connaissance des sains principes du droit. Telle est la doctrine qu’on peut qualifier de française, parce qu’elle est prédominante en France, mais qui a été adoptée généralement par les autres États de l’Europe continentale. Suivant la doctrine française, la tentative de franchir la ligne d’un blocus n’est punissable qu’au moment même où elle s’accomplit; les navires neutres de commerce qui s’en rendent coupables ne peuvent être saisis que s’ils sont surpris en flagrant délit, c’est-à-dire au moment même où ils franchissent la ligne après notification spéciale préalable: ou dans le port bloqué lorsque le bloquant a réussi à y pénétrer par la force ou par surprise, car les navires neutres qui s’y trouvent en violation du blocus n’ont jamais cessé d’être en vue et sous le coup de la poursuite; ou au moment où ces navires neutres se présentent pour sortir
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du port dont ils ont forcé l'accès, ou dans lequel ils sont entrés sans délit de violation, mais dont ils ne peuvent sortir dans telles conditions déterminées. Si l'escadre de blocus n'a pu arrêter le navire coupable de violation, elle peut détacher un des vaisseaux qui la composent pour poursuivre à vue ce navire, et ce dernier ne sera valablement saisi que s'il est atteint par le vaisseau détaché de l'escadre bloquante avant d'être entré dans un port de son pays, ou dans un port neutre, car le droit de prise ne peut s'exercer dans les eaux neutres, et une fois entré dans un port de son pays, ou dans les eaux neutres, s'il en ressort il ne peut plus être question de flagrant délit. Les navires forceurs de blocus ne peuvent être capturés que par les bâtiments de l'escadre bloquante. D'après la doctrine française, en un mot, s'il agit de violation de blocus par entrée, le navire neutre qui viole un blocus par entrée au port bloqué ne peut être capturé que sur la ligne du blocus, ou sur poursuite commencée de la ligne du blocus et terminée, avec succès, avant l'arrivée du navire poursuivi, dans un port de son pays ou dans les eaux territoriales d'un État neutre; s'il est question de violation par sortie, cette violation prend fin dès que les lignes ont été franchies avec succès. Celui qui viole un blocus par sortie ne peut être pris qu'au moment où il essaie de franchir les lignes d'investissement, ou au cours d'une poursuite commencée sur le champ et achevée avec succès en haute mer. Dans l'un et l'autre cas de violation la capture ne peut avoir lieu que par les navires de l'escadre de blocus. Cette doctrine si conforme à la nature des choses, au droit et à la raison, exclut, on le voit, le droit de suite, qui n'est qu'un vestige des blocus fictifs. La déclaration du congrès de Paris, du 16 avril 1856, et les traités conclus depuis cette époque par les Puissances maritimes, l'ont virtuellement supprimé en exigeant que les blocus soient effectifs.

American decisions.—In the case of the British-owned steamer Memphis, seized by the U.S. S. Magnolia in 1862, it was claimed that the Magnolia, which seized the Memphis for violation of the blockade of Charleston, could not legally make such a capture, because not a part of the blockading squadron and because the seizure was made at a point about 85 miles distant from the blockade.

The decision of Mr. Justice Betts was that:

Any public vessel of the belligerent whose rights had been violated may be the agent or minister to apprehend the offender, though, by dexterity or superior speed, the culpable actor may escape arrest at the time or place of the perpetration of the wrong. *

A vessel guilty of an unlawful trade with the enemy is liable to capture at any time during the voyage in which the offence is committed. (The Memphis, Blatchford Prize Cases, 260.)
As was said in the case of the Olinde Rodrigues, decided by the Supreme Court, May 15, 1899, our Government was originally of opinion that "commercial blockades in respect of neutral powers ought to be done away with; but that view was not accepted, and during the period of the civil war the largest commercial blockade ever known was established." (174 U. S. Supreme Court Reports, 510.)

Early American opinion.—The United States was inclined to follow the European law of nations in regard to the principle of blockade in the eighteenth and early nineteenth century. In 1797, in the instructions to the representatives to France, the Secretary of State said:

Such extensive depredations have been committed on the commerce of neutrals, and especially of the United States, by the citizens of France, under pretence that her enemies (particularly Great Britain) have done the same things, it will be desirable to have it explicitly stipulated that the conduct of an enemy towards the neutral Power shall not authorize or excuse the other belligerent Power in any departure from the law of nations or the stipulations of the treaty; especially that the vessels of the neutral nation shall never be captured or detained, or their property confiscated or injured, because bound to or from an enemy's port, except the case of a blockaded port, the entering into which may be prevented according to the known rule of the law of nations. And it may be expedient to define a blockaded place or port to be one actually invested by land or naval forces, or both, and that no declaration of a blockade shall have any effect without such actual investment. And no commercial right whatever should be abandoned which is secured to neutral Powers by the European law of nations. (American State Papers 2 Foreign Relations 154.)

Mr. Madison, Secretary of State, in 1806 made a report to the President, mentioning other deviations from what he would at that time regard as international law.

The most important of the principles interpolated into the law of nations, is that which appears to be maintained by the British Government and its prize courts, that a trade opened to neutrals by a nation at war, on account of the war, is unlawful.

The principle has been relaxed from time to time, by order, allowing, as favors to neutrals, particular branches of trade, disallowed by the general principle; which orders have, also in some instances, extended the modifications of the principle beyond its avowed import.
In like manner, the last of these orders, bearing date the 24th of June 1803, has incorporated, with the relaxation, a collateral principle, which is itself an interpolation, namely, that a vessel on a return voyage is liable to capture by the circumstance of her having, on the outward voyage, conveyed contraband articles to an enemy's port. How far a like penalty, attached, by the same order, to the circumstance of a previous communication with a blockaded port, would likewise be an interpolation, may depend upon the construction under which that part of the order has been, or is to be, carried into execution.

The general principle, first above stated, as lately applied to reexportations of articles imported into neutral countries from hostile colonies, or vice versa, by considering the reexportation, in many cases, as a continuation of the original voyage, forms another interpolation, deeply affecting the trade of neutrals. For a fuller view of this and some other interpolations, reference may be had to the documents communicated with the message to Congress of the 17th instant.

The British principle which makes a notification to foreign Governments of an intended blockade equivalent to the notice required by the law of nations, before the penalty can be incurred; and that which subjects to capture vessels, arriving at a port, in the interval between a removal and return of the blockading force, are other important deviations from the code of public law. (Ibid., p. 728.)

The United States in 1806 regarded certain of the practices of Great Britain, which have since been accorded recognition as justifiable by the American Government, as beyond the sanction of the law of nations:

In addition to what is proposed on the subject of blockades in the sixth and seventh articles, the perseverance of Great Britain in considering a notification of a blockade, and even of an intended blockade, to a foreign Government, or its ministers at London, as a notice to its citizens, and as rendering a vessel, wherever found in a destination to the notified port, liable to capture, calls for a special remedy. The palpable injustice of the practice is aggravated by the auxiliary rule prevailing in the British courts, that the blockade is to be held in legal force until the governmental notifications be expressly rescinded, however certain the fact may be that the blockade was never formed, or had ceased. You will be at no loss for topics to enforce the inconsistency of these innovations with the law of nations, with the nature of blockades, with the safety of neutral commerce, and particularly with the communication made to this Government by order of the British Government in the year 1804, according to which, the British commanders and vice-admiralty courts were instructed not to consider any blockade of the islands of Martinique and Guadaloupe as existing, unless in respect of particular ports which may actually be invested, and then not to capture vessels bound to such ports, unless they shall previously have been warned not to enter them. (American State Papers, 3 Foreign Relations 121, Letter of Madison to United States Ministers at London, May 17, 1806.)
That the United States did not accept the extreme doctrine of constructive notification, is seen in the instructions of the Secretary of the Navy to Commodore Preble early in the nineteenth century:

NAVY DEPARTMENT, February 4, 1804.

Sir: Your letter of the 12th November, enclosing your circular notification of the blockade of the port of Tripoli, I have received.

Sensible, as you must be, that it is the interest, as well as the disposition, of the United States to maintain the rights of neutral nations, you will, I trust, cautiously avoid whatever may appear to you to be incompatible with those rights. It is, however, deemed necessary, and I am charged by the President to state to you what, in his opinion, characterizes a blockade. I have, therefore, to inform you, that the trade of a neutral, in articles not contraband, cannot be rightfully obstructed to any port not actually blockaded by a force so disposed before it, as to create an evident danger of entering it. Whenever, therefore, you shall have thus formed a blockade of the port of Tripoli, you will have a right to prevent any vessel from entering it, and to capture for adjudication any vessel that shall attempt to enter the same, with a knowledge of the existence of the blockade. You will, however, not take as prize any vessel attempting to enter the port of Tripoli without such knowledge; but in every case of an attempt to enter, without a previous knowledge of the existence of the blockade, you will give the commanding officer of such vessel notice of such blockade, and forewarn him from entering; and if, after such a notification such vessel should again attempt to enter the same port, you will be justifiable in sending her into port for adjudication. You will, sir, hence perceive, that you are to consider your circular communication to the neutral Powers not as an evidence that every person attempting to enter has previous knowledge of the blockade, but merely as a friendly notification to them of the blockade, in order that they might make the necessary arrangements for the discontinuance of all commerce with such blockaded port.

I have the honor to be, &c.,

ROBERT SMITH.

Instructions in 1898.—The present understanding of the United States as to what constitutes reasonable efficiency and renders a blockade effective is seen in General Order 492, of June 20, 1898:

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 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.

General Order 492 also provides in regard to penalty that—

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 upon 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.

*French treaty provisions.*—In a large number of treaties into which France has entered there is the following article:

Dans aucun cas un bâtiment de commerce appartenant à des citoyens de l’un des deux pays, qui sera expédié pour un port bloqué par l’autre état, ne pourra être saisi, capturé ou condamné si préalablement il ne lui a été fait une notification ou signification de l’existence ou continuation d’un blocus par les forces bloquantes ou par quelque bâtiment faisant partie de l’escadre ou division du blocus, et pour qu’on ne puisse alléguer une prétendue ignorance du blocus, et que le navire qui aura reçu cette intimation soit dans le cas d’être capturé s’il vient ensuite à se représenter devant le port bloqué pendant le temps que durera le blocus, le commandant du bâtiment de guerre qui fera la notification devra apposer son visa sur les papiers du navire visité, où sera faite la signification de l’existence du blocus, et le capitaine du navire visité lui donnera un reçu de cette signification, contenant les déclarations exigées par le visa.

The French practice of notification at the place of blockade is generally supported on the Continent.

*Treaty agreements as to necessity of notification.*—While the United States has maintained the doctrine of constructive notification arising from general notoriety, yet, in effect, action by a naval officer upon such a doctrine would be at risk, as a number of treaties require that proof that the neutral vessel knew of the blockade rests upon the captor. By the "most-favored-nation clause" such provision as was included in article 13 of the treaty of 1827 with Sweden, which is now in force, might become effective as regards other states:
Considering the remoteness of the respective countries of the Two High Contracting Parties, and the uncertainty resulting therefrom with respect to the various events which may take place, it is agreed that a merchant vessel, belonging to either of them, which may be bound to a port supposed, at the time of its departure, to be blockaded, shall not, however, be captured or condemned for having attempted, a first time, to enter said port, unless it can be proved that said vessel could, and ought to, have learned, during its voyage, that the blockade of the place in question still continued. But all vessels which, after having been warned off once, shall during the same voyage, attempt, a second time, to enter the same blockaded port, during the continuance of said blockade, shall then subject themselves to be detained and condemned. (Art. XVIII, Treaty between United States and Sweden, 1827.)

**Opinions of text writers.**—Wheaton states the doctrine generally accepted in the United States and in Great Britain:

The offence incurred by a breach of blockade generally remains during the voyage; but the offence never travels on with the vessel further than to the end of the return voyage, although if she is taken in any part of that voyage, she is taken *in delicto*. This is deemed reasonable, because no other opportunity is afforded to the belligerent cruisers to vindicate the violated law. (Int. Law, sec. 523.)

Pradier-Fodéré says of this interpretation:

La doctrine et la pratique anglaises ont été suivies par les États-Unis de l’Amérique du Nord. Wheaton, par exemple, trouve raisonnable que le navire neutre capturé à quel moment, dans quel temps que ce soit de son voyage de retour, soit considéré comme pris en flagrant délit, car, dit-il, il ne s’offre aucune autre occasion aux vaisseaux du belligérant de punir la violation du blocus. Cet auteur américain oublié que si le blocus est effectif, *ainsi qu’il doit l’être nécessairement pour être régulier et obligatoire*, il se trouvera toujours devant le point bloqué des navires de guerre assez proches pour apercevoir l’infraction, le poursuivre à vue, l’arrêter et même le couler, ce qui rendra possible le châtiment sur les lieux mêmes et immédiatement, sans avoir besoin d’attendre des conjonctures ultérieures et incertaines. **Il ne peut y avoir de flagrant délit que dans le cas où le navire neutre, aperçu au moment de la violation du blocus, est saisi sur les lieux et au moment même, ou bien a été poursuivi à vue par un des bâtiments bloquants; dans ce cas le flagrant délit durera aussi longtemps que la poursuite à vue pourra être continue, et cessera dès que le navire neutre aura cessé d’être en vue, ou dès qu’il sera entré dans un port neutre, ou non, quelconque. Voilà ce que suggèrent le bon sens et la connaissance des sains principes du droit.** (8 Droit Int. Public, sec. 3143, p. 423.)
Gessner, who has given much attention to the right of blockade, says:

Si un vaisseau neutre, au moment où il cherche à violer un blocus, est poursuivi par un vaisseau de l’escadre bloquante et cherche à s’y soustraire par la fuite, le vaisseau belligérant aura incontestablement le droit de saisir le vaisseau délinquant s’il l’atteint avant que celui-ci soit entré dans un port neutre. Suivant la pratique anglaise, le belligérant conserverait ce droit aussi longtemps que le navire neutre ne serait pas arrivé à destination; ce dernier pourrait être saisi lorsqu’il quitterait son asile pour achever son voyage. Suivant l’opinion que nous croyons juste, au contraire, toute poursuite doit cesser du moment où le vaisseau chassé a atteint un port neutre. (Le Droit des Neutres sur Mer, 214.)

Fauchille, who has written learnedly upon the subject of blockade, says of the Anglo-American doctrine:

Cette doctrine anglaise, que les tribunaux américains ont aussi appliquée dans la guerre de la sécession, est au contraire absolument repoussée par les autres puissances. Ces États sont en effet d’avis qu’un navire coupable de violation de blocus peut seulement être atteint: 1° au moment où il traverse les eaux occupées par la nation bloquante; 2° dans la rade ou le port bloqué; 3° au moment où il se présente pour sortir; ils font toutefois cette réserve que si un vaisseau neutre, au moment où il cherche à violer un blocus, est poursuivi par un vaisseau de l’escadre bloquante et tente de s’y soustraire par la fuite, le vaisseau belligérant doit avoir le droit de saisir le vaisseau délinquant, s’il l’atteint avant que celui-ci soit entré dans un port neutre. Telle est l’opinion qui paraît prévaloir en France, en Allemagne et en Espagne. Telle est aussi la doctrine actuellement suivie par l’Italie * * *

De ces deux systèmes que nous venons d’exposer, lequel faut-il préférer? Voilà la question qu’il faut maintenant résoudre.

De ce qu’un fait matériel est nécessaire pour constituer la violation de blocus, il nous paraît logique de conclure que le navire neutre qui enfreint le blocus ne peut être capturé qu’au moment même où il consomme son délit. Alors seulement il y aura surprise du vaisseau en flagrant délit et garantie suffisamment sérieuse accordée aux neutres contre l’oppression des belligérants. Un pareil système ne diminue d’ailleurs en aucune façon les droits du bloqueur, et il ne lui enlève point les moyens de punir les infracteurs du blocus. En effet, s’il s’agit d’un blocus effectif, et nous n’en admettons pas d’autre, il se trouve toujours à l’entrée du port des bâtiments arrêtés et assez proches pour saisir le coupable ou pour le couler, s’il le faut, comme ils en ont le droit incontestable et incontesté. Ils doivent, du reste, l’apercevoir et le poursuivre à vue. Il est donc évident que le raisonnement de Sir W. Scott, que nous avons rapporté, ne peut avoir d’application...
OPINIONS OF TEXT WRITERS.

qu'aux blocus fictifs, et que par suite il est mal fondé, ces blocus n'étant pas reconnus par le droit international. Il nous paraît impossible d'admettre la fiction que le flagrant délit puisse exister pendant tout un voyage, souvent très long, alors que le coupable n'a été ni vu ni aperçu au moment du délit, et que, pour avoir connaissance du fait, il faut monter à bord du navire—navire neutre destiné à un port neutre—et chercher la preuve dans ses propres papiers. Admettre un pareil système, ce serait renverser toutes les idées reçues en matière criminelle: il n'y a et il ne peut y avoir flagrant délit que dans le cas où le navire, aperçu au moment de la rupture du blocus, a été poursuivi à vue par un des bâtiments bloquants; dans ce cas, le flagrant délit durera aussi longtemps que la poursuite à vue pourra être continuée; il cesserait donc dès que le navire aura cessé d'être en vue ou dès qu'il sera entré dans un port ami ou neutre. (Du Blocus Maritime, p. 354.).

Creasy says:

That liability to seizure for breach of blockade continues so long as the blockade actually continues; and so long as the offence for which the seizure is made is considered to be continuing. The rule commonly laid down is that the capture must be effected while the vessel is in delicto. A vessel which has broken blockade by egress is considered to be in delicto until she has reached her port of destination and has completed her voyage. But as soon as a blockade is raised a vessel ceases to be liable to seizure for breach of blockade, although if already captured she is not to be released. (First Platform of Int. Law, sec. 619.)

Rosse, of the French navy, gave his opinion as follows:

Lorsqu'un navire a violé de fait un blocus, à quel moment doit-il être saisi pour être régulièrement punissable?

L'Angleterre et les États-Unis enseignent qu'ils sont punissables tant qu'ils n'ont pas atteint leur destination finale, qu'ils aient été ou non poursuivis par les croiseurs belligérants. Une relâche dans un port intermédiaire n'interrompt pas le droit de suite.

Cette doctrine est absolument repoussée par les autres puissances qui admettent qu'un navire coupable peut seulement être atteint:

1°) Au moment où il traverse les eaux occupées par la nation bloquante.

2°) Dans la rade ou le port bloqué.

3°) Au moment où il se présente pour sortir.

Toutefois, en cas de poursuite à vue par le bloquant au moment de la rupture du blocus, elles admettent le droit de saisie jusqu'à l'entrée dans un port neutre.

Nous nous rangerons à ce système, et nous exigerons le flagrant délit pour que la capture soit régulière, mais il paraît impossible d'admettre que le flagrant délit puisse exister pendant tout un voyage,
alors que le coupable n'a été ni vu ni aperçu au moment du délit et que, pour avoir connaissance du fait, il faut monter à bord du navire et chercher la preuve dans ses papiers.

Ce que nous avons dit du navire qui, à sa sortie, est poursuivi par le bloquant, doit être entendu aussi de celui qui est entré dans la place investie et qui s'y trouve encore au moment où elle est prise. Ce navire, qui n'a jamais cessé d'être en vue, est toujours sous le coup de la poursuite légitime du bloqueur. (Guide International du Commandant de Bâtiment de Guerre, p. 259.)

According to the opinion of Kent:

If a ship has contracted guilt by a breach of blockade, the offence is not discharged 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. (I Kent Commentaries, 151.)

Halleck mentions the possible cases in which egress from a blockaded port is allowed:

There are a number of cases in which the egress of the neutral vessel, during a blockade, is justified or excused, which we will enumerate. **First**, If the ship is proved to have been in the blockaded port when the blockade was laid, she may retire in ballast, for such egress affords no aid to the commerce of the enemy, and has no tendency to defeat any legitimate purpose for which the blockade was established. **Second**, If the egress was from physical necessity, arising from stress of weather, and the immediate need of water, or provisions, or repairs. **Third**, Where the entrance with a cargo was authorized by a license, such license is construed to authorize the return of the ship with a cargo. **Fourth**, Where a neutral ship, arriving at the entrance of a blockaded port, in ignorance of the blockade, is suffered to pass, there is an implied permission to enter, which fully protects her egress. But this implied permission does not, of necessary consequence, protect the cargo, for its owners may be guilty of a criminal violation of the blockade even where the ship is innocent. **Fifth**, A neutral ship, whose entry into the blockaded port was lawful, is permitted to return with her original cargo that has been found unsaleable, and reshipped during the blockade. **Sixth**, An equitable exception is allowed in favor of a neutral ship that leaves the port in the just expectation of a war between her own country and that to which the blockaded port belongs. In this case, she is permitted to depart, even with a cargo purchased from the enemy during the blockade, if the purchase was made with the funds of neutral owners, and the investment and shipment were probably necessary to save the property, in the event of a war, from a seizure and confiscation by the enemy. But it is not the mere apprehension of a remote and possible danger that will entitle a neutral ship to this exemption. To save the vessel and cargo from
condemnation, it must appear that there was a well-founded expectation of an immediate war, and consequently that the danger of the seizure and confiscation of the property was imminent and pressing. (2 Halleck Int. Law, Baker 4th ed., p. 236, ch. XXV, sec. 34.)

The above reasons would not excuse a merchant vessel which had deliberately violated the blockade by ingress.

Duer says that a neutral ship is not permitted to enter a blockaded port even in ballast—

Although an exception of this kind is allowed in the case of an egress, the reasons on which it is founded are not applicable to an inward voyage. The egress is necessary to restore the ship to the beneficial use of the owners, and can tend, in no degree, to aid the commerce that is meant to be prohibited; but there can be no necessity for sending a ship to a blockaded port, and the intention of procuring a freight is the only assignable motive of the voyage. It is a fair presumption that it is intended that she shall return with a cargo, purchased or prepared in the blockaded port, not that she shall return in ballast, thus rendering the entire expedition a fruitless expense, nor that she will remain useless in port during the uncertain period that the blockade may continue. (1 Insurance, 671.)

According to the opinion of Bluntschli:

Les navires neutres ne peuvent être capturés en dehors des eaux bloquées, même lorsqu’ils ont réussi à forcer le blocus. (Bluntschli, Droit International Codifié, sec. 836.)

General Davis says of violation of blockade:

When the offence is one of egress the penalty continues until the vessel reaches the territorial waters of a neutral state. (Elements of Int. Law, p. 476.)

In regard to the duration to the return to the home port of the liability to penalty for violation of blockade, Kleen says:

C’est à juste titre que bon nombre de publicistes modernes condamnent sévèrement encore cette dernière manière d’augmenter indûment la répression. Leurs raisons sont pour la plupart les mêmes que celles alléguées plus haut contre l’extension de la culpabilité elle-même au delà de l’acte et de son moment à savoir principalement: que l’état juridique du blocus est essentiellement local; que sa compétence ne peut pas être étendue au delà de cet état, à d’autres occasions et à d’autres places; qu’une poursuite qui précéderait l’acte, fondée sur la présomption toujours incertaine d’intentions ou de destinations, tomberait dans l’arbitraire, et que celle qui succéderait, notamment au refuge du navire coupable dans un port neutre, prolongerait le droit de la guerre au delà de ses limites et menacerait la sécurité générale.
Aussi ces publicistes s'accordent-ils à reconnaître que, de même qu'un blocus ne peut être violé que sur ses lieux et qu’il ne peut pas l’être par le voyage, de même la violation ne peut être poursuivie qu’en flagrant délit, ni avant ni après. Avant, aucune mesure quelconque ne peut légalement être prise contre le navire suspect; et après, aucune mesure ne peut être prise autre que celles qui sont motivées par des circonstances et qui sont censées propres à prolonger la phase du fait, à savoir les saisies soit dans le port même, soit sur la place à la sortie de là, soit enfin sur la haute mer et dans les eaux des belligérants à la seule condition que la poursuite ait commencé au moment du fait et sur la place, et que sa continuation aux dits lieux n’ait pas été interrompue mais puisse être considérée comme une simple suite de l’action dirigée contre le délit pris sur le fait. Au contraire, un navire déjà échappé, dont l’action interdite n’a pas été empêchée ni attaquée sur la place du blocus, et qui n’a pas non plus été poursuivi immédiatement, ne peut pas être attaqué après coup et ailleurs, fût-ce pendant le même voyage. Et une fois dans les ports ou les eaux neutres, il est pour toujours hors de portée de toute poursuite, indépendamment de la fin du voyage. (I Kleen, La Neutralité, p. 639.)

Russian regulations.—The Russian prize regulations of March 27, 1895, Article 11, provides that:

Merchant vessels of neutral nationality are subject to confiscation as prizes in the following cases: *(2) when the vessels are caught violating a blockade and it is not proven that the establishment of the blockade remained unknown to the masters.*

In the instructions for the carrying out these regulations it is stated that—

37. Vessels subject to detention are the following: *(2) Neutral merchant vessels.* *(3) If they are caught violating an actual and declared blockade.*

Japanese regulations.—The Japanese regulations of March 7, 1904, in general follow English precedents, and give the belligerent more liberty than is customary under continental practice.

Art. XXI. Blockade is to close an enemy’s port, bay, or coast with force, and is effective when the force is strong enough to threaten any vessels that attempt to go in or out of the blockaded port or bay or to approach the blockaded coast.

Temporary evacuation of a blockaded area by a squadron or man-of-war on account of bad weather or to attain the object of the blockade does not interfere with the effectiveness of the blockade.

Art. XXV. In case the master of a vessel receives warning direct from an imperial war vessel, or it is clear that he knows of the existence
of the blockade from official or private information or from any other source, such master shall be considered to have received actual notice of the blockade.

Art. XXXVII. Any vessel that comes under one of the following categories shall be captured no matter of what national character it is:

1. Vessels that carry persons, papers, or goods that are contraband of war.
2. Vessels that carry no ship's papers, or have willfully mutilated or thrown them away, or hidden them, or that produce false papers.
3. Vessels that have violated a blockade.

Consideration at The Hague, 1907.—At the Second Peace Conference at The Hague in 1907, the Italian delegation submitted the following proposition concerning blockade:

1. Le blocus pour être obligatoire doit être effectif, déclaré et notifié.
2. Le blocus est effectif lorsqu’il est maintenu par des forces navales de guerre suffisantes pour interdire réellement le passage, et stationnées de manière à créer un danger évident pour les navires qui voudraient le tenter.
3. Le blocus n’est pas considéré comme levé si le mauvais temps a forcé les navires bloquants à s’éloigner momentanément de leur station.
4. La déclaration de blocus doit déterminer le moment précis du commencement du blocus, ses limites par longitude et latitude, et le délai dans lequel la sortie du port est permise aux navires neutres entrés avant le commencement du blocus.
5. La déclaration doit être notifiée aux autorités de la place bloquée et aux Gouvernements des États neutres.
   Si cette notification n’a pas eu lieu, ou si le navire approchant du port bloqué prouve qu’il n’avait pas connaissance du blocus, la notification doit être faite au navire même, par un officier de l’un des bâtiments formant le blocus, et inscrite sur les papiers de bord.
6. Un navire ne peut-être saisi comme coupable de violation de blocus qu’au moment où il tente de franchir les lignes d’un blocus obligatoire.
7. Il est permis aux navires d’entrer dans le port bloqué en cas de détresse constatée par le commandant du blocus.
8. Le navire saisi pour violation de blocus pourra être confisqué ainsi que sa cargaison, à moins que le propriétaire de celle-ci ne prouve que la tentative de violation du blocus a été commise à son insu.

The United States delegation proposed the following amendments:

In Article 3 strike out the words “par longitude et latitude.”
Substitute for Article 5, as submitted by the Italian delegation, “Tout navire qui, après qu’un blocus a été dûment notifié, fait voile pour un port ou une place bloqués, ou qui essaie de forcer le blocus, peut être saisi pour violation de blocus.”
The delegation from Great Britain proposed:

In Article 2 to substitute the word "évident" for "réel."
To follow in Article 3 the amendment suggested by the American delegation.
In Article 4 to substitute for the words "le navire approchant" the words "un navire approchant."
In Article 5 to follow the amendment suggested by the American delegation.

Lieutenant-Colonel van Oordt, of the Netherlands delegation to the Hague Conference of 1907, said of the American doctrine of liability to capture throughout voyage for violation of blockade:

L'extension du droit de capture, contenue dans la proposition américaine, n'est en effet autre chose que l'application de la pratique des blocus fictifs aux blocus effectifs. Accorder au belligérant le droit de saisie sur les navires, qui font voile pour un port bloqué, avant qu'ils n'aient tenté d'y entrer, c'est ajouter au danger imminent du passage de la ligne du blocus (le caractère essentiel du blocus effectif) le danger d'être saisi en pleine mer; c'est au fond: étendre le blocus pour ainsi dire partout en pleine mer où il ne peut pas être effectif; c'est enfin soumettre la saisie au hasard d'une rencontre avec un croiseur de l'Etat bloqueur; ce qui est, d'après les événements qui ont abouti à la Déclaration de Paris de 1856, en contradiction avec l'idée même du blocus effectif. (4e Commission, le 2 août, 1907.)

Use of tramp steamers.—The importance of coming to some decision as to the possible treatment in time of war of what are commonly called "tramp steamers" is evident from the following testimony given before the British Royal Commission on Supply of Food and Raw Material in Time of War in 1904. The conditions of the mercantile marine of the world have remained relatively unchanged since that time, so that the testimony may be taken as applicable to the present time. The chairman of the commission, Lord Balfour, examining Mr. Walter Runciman, M. P., elicits the following:

10259 (chairman). I understand you are a member of the firm of Walter Runciman & Co., of Newcastle-on-Tyne and London, and that you are a part owner and one of the managing directors of a group of companies which own 28 cargo vessels of what are known as the tramp class, varying in size from 4,000 to 6,000 tons dead weight each.—That is so.
10260. I suppose they are engaged on their homeward voyages in carrying raw material and grain to British and northern continental ports, are they not?—Almost entirely.

10261. As a matter of fact, during the last year you did carry over 1,100,000 quarters of grain, of which a considerable portion came to British ports?—Yes; a very large amount of it did.

10262. You are here in consequence of our invitation to you to tell us what you can, not so much as the representative of any association, but as an owner of this class of vessels?—I come purely as a typical tramp owner—not as being authorized by any association.

10263. You know, of course, the circumstances of the British mercantile marine; I understand that, speaking roughly, of the 7,000 steam vessels of any considerable size flying the British flag, about 1,500 are liners and the remainder are tramps?—Yes.

10264. Can you put those figures into tonnage?—I should say that about one-half of the tonnage of the British mercantile marine is tramp tonnage. Of course, that is an approximate figure, but it is arrived at after consultation with the officials of the Shipping Federation and of the Chamber of Shipping, who are the great authorities.

10265. Classified according to their trading, what should you say about these tramps?—It is very difficult to say exactly where they are employed, but I should think that about one-third of them are engaged in the carriage of grain.

10266. Would you say that the smaller vessels would be in the north of Europe, that the medium-sized vessels would be in the Black Sea grain trade, and that the larger boats load homeward from the East, Argentine, and America?—That is approximately correct.

10267. At what kind of average speed do they run?—They are practically 9-knot boats. At the outside under pressure they might get up to 11\(\frac{1}{2}\) knots, but not beyond that.

10268. I suppose they are well loaded up when they come home?—They have practically all full cargoes; tramp steamers can not afford to come with part cargoes.

10269. Of course, with full cargoes they would not be able to go for any length of time at their maximum speed?—No; they go on an average at a 9-knot speed at the present time, because it happens to be the most economical. If they were to increase their speed to 11\(\frac{1}{2}\) knots that would run away with such an immense amount of coal as to diminish their cargo capacity below a profitable level.

10270. In a vessel of that class the advantage of adding a knot an hour to its normal speed is out of proportion to the cost of doing so, is it not?—Yes; I should say that the average 6,000-ton tramp, which is a fair sample to take, would burn about 20 tons a day going at 9 knots; if she were forced up to 10 knots she would probably burn 25 tons a day, and if she were forced up to 11 knots about 32 or 35 tons a day.

10271. Which would very nearly run away with all the profit, in addition to the impossibility of a cargo steamer carrying so much coal?—Yes.
10272. Assuming for the moment—because that is one of the problems which we are endeavoring to consider—that we were at war with a continental power strong at sea, should you anticipate that the apprehensions of captures would lead to a cessation of the tramp steamers plying their voyages?—I do not think that that would be so. I think tramp-steamer owners, on the whole, are quite sporting, and that they are prepared to take risks. They would be paid large freights and would naturally endeavor to take advantage of them.

10273. Then you agree with those witnesses who have told us that the freights would be large?—Yes; they might run up to anything; it depends entirely on the risk of capture.

10274. That would be, of course, largely on account of the cost of insurance?—Yes; it would be almost entirely on account of that. There would naturally be a certain amount of excitement among merchants, and a great desire to get cargoes of food and raw materials into this country. That would, of course, have its effect on the freight market, but the main addition would be owing to the cost of insurance.

10275. Even assuming that we maintained command of the sea, do you think that freights would quickly be, as you suggest, tripled or quadrupled?—I think they might quite easily; one or two captures would have a most exciting effect on the insurance market, and as we have seen already that would inflate the cost of carriage enormously. A 10-per-cent insurance rate, for instance, would have a very considerable effect on freights.

10276. Assuming for the moment what is a most important consideration for us that the Atlantic was infested by one or two commerce destroyers of some hostile power, have you the power of modifying your routes from north to south, and so on?—Certainly; we can go anywhere. We do so now; for instance, in the summer months we send our vessels across the Atlantic north about, and in the winter months we send them south about.

* Bearing of the Hague conventions.*—There is no question that the *Warren* had knowledge of the existence of the blockade through which she had passed on entering and within which she had been while unloading:

A vessel being in a blockaded port is presumed to have notice of the blockade as soon as it commences. This is the settled law of nations. (2 Black, Prize Cases, 635.)

According to Convention XII, relative to the establishment of an international prize court, a case similar to the one suggested by this situation might easily pass to this court. The convention provides:

**Article I.** The validity of the capture of a merchant ship or its cargo is decided before a prize court, in accordance with the present convention when neutral or enemy property is involved.
ART. II. Jurisdiction in matters of prize is exercised in the first instance by the prize courts of the belligerent captor.

The judgments of these courts are pronounced in public or are officially notified to parties concerned who are neutrals or enemies.

ART. III. The judgments of national prize courts may be brought before the international prize court: (1) When the judgment of the national prize courts affects the property of a neutral power or individual. (2) When the judgment affects enemy property and relates to—

(a) Cargo on board a neutral ship.

(b) An enemy ship captured in the territorial waters of a neutral power when that power has not made the capture the subject of a diplomatic claim.

(c) A claim based upon the allegation that the seizure has been effected in violation either of the provisions of a convention in force between the belligerent powers, or of an enactment issued by the belligerent captor.

The appeal against the judgment of the national court can be based on the ground that the judgment was wrong either in fact or in law.

ART. IV. An appeal may be brought: (1) By a neutral power, if the judgment of the national tribunals injuriously affects its property or the property of its nationals (article 3, 1), or if the capture of an enemy vessel is alleged to have taken place in the territorial waters of that power (article 3, 2, b). (2) By a neutral individual, if the judgment of the national court injuriously affects his property (article 3, 1), subject, however, to the reservation that the power to which he belongs may forbid him to bring the case before the court, or may itself undertake the proceedings in his place. (3) By an individual subject or citizen of an enemy power, if the judgment of the national court injuriously affects his property in the cases referred to in article 3; (2) except that mentioned in paragraph (b).

ART. V. An appeal may also be brought on the same conditions as in the preceding article by persons belonging either to neutral states or to the enemy, deriving their rights from and entitled to represent an individual qualified to appeal, and who have taken part in the proceedings before the national court. Persons so entitled may appeal separately to the extent of their interest.

The same rule applies in the case of persons belonging either to neutral states or to the enemy who derive their rights from and are entitled to represent a neutral power whose property was the subject of the decision.

ART. VII. If a question of law to be decided is covered by a treaty in force between the belligerent captor and a power which is itself or whose subject or citizen is a party to the proceedings, the court is governed by the provisions of the said treaty.

In the absence of such provisions the court shall apply the rules of international law. If no generally recognized rule exists, the court shall give judgment in accordance with the general principles of justice and equity.
ART. VIII. If the court pronounces the capture of the vessel or cargo to be valid they shall be disposed of in accordance with the laws of the belligerent captor.

If it pronounces the capture to be null, the court shall order restitution of the vessel or cargo, and shall fix, if there is occasion, the amount of the damages. If the vessel or cargo have been sold or destroyed, the court shall determine the compensation to be given to the owner on this account.

If the national court pronounced the capture to be null, the court can only be asked to decide as to the damages.

ART. XIV. The court is composed of 15 judges—9 judges constitute a quorum.

A judge who is absent or prevented from sitting is replaced by the deputy judge.

ART. XV. The judges appointed by the following contracting powers—Germany, the United States of America, Austria-Hungary, France, Great Britain, Italy, Japan, and Russia—are always summoned to sit.

The judges and deputy judges appointed by the other contracting powers sit by rota, as shown in the table annexed, to the present convention; their duties may be performed successively by the same person. The same judge may be appointed by several of the said powers.

If there is to be an international prize court, then such differences in practice and theory as exists between the French and English in regard to the duration of liability of penalty for violation of blockade would be properly under consideration. As the Hague Convention in regard to an international prize court has received general approval its ratification is probably merely temporarily delayed. According to the report of the United States delegates:

The purpose then of the convention is to substitute international for national judgment and to subject the decision of a national court to an international tribunal composed of judges trained in maritime law. It was not the intention of the framers of the convention to exclude a judge of the captor's country whose presence on the bench would insure a careful consideration of the captor's point of view, but to make the decision of the case depend upon strangers to the controversy who, without special interest and national bias, would apply in the solution of the case international law and equity. The national judgment becomes international; the judgment of the captor yields to the judgment of the neutral, and it can not be doubted that neutral powers are more likely to guard the rights of neutrals than any bench composed exclusively of national judges. (Instructions to and Report from the Delegates of the United States, Senate Doc. No. 444, p. 45, 60 Cong. 1st sess., 1908.)
Termination of voyage.—Termination of voyage is sometimes held to be when a vessel has moored in a port twenty-four hours in safety. (Lidgett v. Secretan, English Common Pleas, January 24, 1870.)

Port of discharge is often held as termination of voyage.

As was said in the case of the Lucy in 1904, the term "voyage" has no fixed or technical meaning. It may refer to the outward voyage or to the homeward voyage or to the round voyage. (39 Court of Claims, 221.)

The term "voyage" in maritime law has received various interpretations. The common meaning is "the passing of a vessel from one place, port, or country to another." The term is further defined as "the enterprise entered upon, and not merely the route" (113 Mass. Reports, 326), the time during which the vessel is engaged in performing the contract contained in the charter. (The Carron Park, 15 Probate Div., English Law Repts., 1890, p. 203.) Voyage is sometimes said to be completed on discharge of cargo.

Voyage may be defined arbitrarily by domestic law, e. g., a colonial voyage means a voyage from any port whatever in a British possession, other than British India and Hongkong, to any port whatever, where the distance between such ports exceeds 400 miles, or the duration of the voyage, as determined under this part of this act, exceeds three days. (18 and 19 Vict., c. 119, s. 95.)

In the case of the Warren the entrance to and departure from blockaded port M, of State X, was liable to penalty as parts of a single venture. This venture was, however, complete when the Warren entered St. Thomas and began to load under a new charter and proceeded bona fide to Bremen. The fact that the Warren was in the North Sea bound for Bremen is evidence that this is a new venture in no way connected with the violation of blockade. The Warren, under present law, could probably claim that her voyage to and from port M ended when she reached St. Thomas and that she was therefore exempt.
Résumé.—The ordinary British statement, in which after a time the United States concurred, as to the liability of a vessel which had violated a blockade, was that the vessel might be captured at any time before the end of the return voyage. This rule was formulated with reference to the early commerce by sailing vessels, when the duration of a voyage was comparatively easily determined.

The question as to what constitutes a voyage at the present time, or as to even what constitutes a return voyage, is one upon which there is difference of opinion in maritime law. The introduction of steam vessels has materially changed the methods of transportation. A tramp freight steamer often does not know its course beyond its immediate destination and may never return to the port from which it starts. Such a steamer perhaps takes a cargo from its port of registry, which may be Liverpool, to Constantinople, thence to Bombay, to Yokohama, to San Francisco, to Rio, to Cape Town, etc.

While the General Order 492, issued by the Navy Department of the United States, provides that if a vessel "has succeeded in escaping from a blockaded port she is liable to capture at any time before she reaches her home port," it also says "but with the termination of the voyage the offense ends," and "the liability of a blockade runner to capture and condemnation begins and terminates with her voyage." There is a general opinion unfavorable to this doctrine outside of Great Britain and the United States, which opinion would limit the right of capture to the period of the offense or attempted offense of violation of the blockade and the period during which the blockading force is actively endeavoring in a legitimate manner to bring the vessel within its power.

There would be no question as to the right of a blockading force to pursue a vessel which had violated or attempted to violate a blockade upon the high sea, within belligerent waters, or under certain circumstances a pursuing vessel might run within the marginal waters of a
neutral state provided no hostile act is committed there. In no case, however, is the vessel liable beyond the completion of her voyage. It is held that a vessel which has entered a blockaded port and is subsequently taken when the port is taken, the blockade being uninterrupted, is liable to penalty because the blockading force has continuously endeavored to make the capture of the port and all offending shipping.

The application of the extreme claims of Great Britain and the United States greatly extends the area of capture of neutral vessels. The present tendency is to restrict this area unless the vessel has incurred guilt, by actual participation in the hostilities, as by unneutral service. The Warren had engaged in a commercial venture involving risk, and the risk should come to an end when she has completed the venture, which would seem to be at the time when she had passed out of the field of naval operations—i.e., when she was no longer in danger from the blockading force. This danger would continue so long as the merchant vessel is pursued by a vessel of the blockading fleet and, if pursued, until she completes her voyage.

The maintenance of the present doctrine of Great Britain and the United States would doubtless incline the international prize court to the opinion that such an act as that of the Warren in entering and departing from the blockaded port is evidence of doubt of the effectiveness of the blockade of port M. It seems to follow that unless there is to be a much stricter interpretation of what constitutes a blockade, there must be a limitation of the extreme claims to liability to capture of a vessel like the Warren till she has reached a home port.

As a matter of policy, also, the United States, usually neutral, following its traditional attitude, would favor the abolition of this extreme claim.

As the United States has not adhered to the convention allowing prize to be sent into neutral ports pending adjudication, there would be the further practical difficulty of sending the Warren to a United States court for trial. The distance would be great, the liability for the delay
and injury to the cargo that had in no way been involved in the violation of blockade should be considered, and exactly what constitutes a voyage is not certain.

The treatment of the Warren under circumstances set forth in this situation would not be the same under the policy of different States.

The general tendency of American policy since the middle of the nineteenth century has been in the direction of a justification of capture of such a vessel as the Warren. If the flag of the Warren had been that of a neutral State other than Great Britain there would be danger that international complications might arise even under present laws and practice.

The case of the Warren would be an extreme case under the American and British practice, owing to the uncertainty as to what constitutes a port of destination.

All circumstances should therefore be very carefully considered, involving such as time since the violation of the blockade, distance from the blockaded port, evident good intentions of the suspected merchantman, etc., and in case of doubt the vessel should be sent in for decision by the prize court.

Under the strictest interpretation of the most extended claims of Great Britain and the United States the Warren would be liable to capture under the circumstances set forth in Situation I.

CONCLUSION.

In accord with the prevailing American and British opinion and practice, and in the absence of instructions or other good reasons to the contrary, the commander of the war ship of the United States should capture and send the Warren to the nearest convenient prize court of the United States.