Stockton (9)

Edition 1.

Develop 5.

~~CONFIDENTIAL~~

27a

Year

No. 47

Author: Commander C. H. Stockton USN.

Contents: International Law (9)

Unneutral Service - Blockade

To be returned

International Law

UN-NEUTRAL SERVICE OR PERSONS AND DISPATCHES AS CONTRABAND.

--------ooOoo--------

The carrying of persons and dispatches for belligerent purposes is often classed under the head of contraband of war, but these acts are really not contraband acts. They are called by Hall -Analogues of Contraband, but the better expression seems to the lecturer to be the one suggested by Dana and T.J.Lawrence as Un-neutral service or Acts.

These acts differ from contraband acts by a closer connection with belligerent movements, they are more directly warlike than contraband trade and the association and identification with the enemy becomes more positive and aggressive. In fact, as the title suggests, they are more in the nature of service than any contraband transport of more or less warlike material.

While a contraband trade may simply be a continuation of commerce which is legitimate in time of peace, it seldom occurs that neutrals undertake to transport in time of peace troops of war for another nation, and a forwarding of hostile dispatches as such, implies a state of war.

No neutral ship should, for instance;--

1. Transmit or repeat certain messages or information to or for a belligerent.

2. Carry certain dispatches for a belligerent.

3. Transport certain persons in the service of a belligerent.

4. Accompany naval or military forces as auxiliaries, that is, as colliers, supply or repair vessels. Hospital

ships or transports under the red cross are, of course, not included in the above.

As to the first:--

If a neutral vessel repeats signals made between two fleets or portions of a fleet or from shore to fleet, it is manifest that such vessel is serving one belligerent to such an extent that the other can but regard her as an enemy and treat her so while she is performing this un-neutral service.

In the same manner a vessel who is engaged in laying a telegraph cable in war time for exclusively war purposes is serving one belligerent most effectively at the expense of the other.

The cutting and splicing of the South American cable of Iquique during the civil war in Chile, was a matter of another kind. In this case the cable was American property laid for commercial purposes. The de facto and recognized government of Chile, with whom the cable company had contracted to keep open the line under certain conditions, found itself cut off by the cable station at Iquique, at the time in the possession of the Congressionalists. In order to open communication for the government at Santiago, it was found necessary to cut the cables leading to Iquique and splice the line at sea, which was done under the protection of Admiral McCann and some of his vessels. At that time the United States had not recognized the belligerency of the Congressionalists. With such a belligerency recognized, the right to cut a cable that is used to transmit information or dispatches of a hostile nature, seems to be now in the light of recent events well established. It may well be an important hostile measure.

The second thing which may be considered as forbidden to a neutral ship is the carriage of certain classes of dispatches for a belligerent.

The kind of dispatches referred to are military or naval dispatches or dispatches between a belligerent government and the officials of its colonies and dependencies. Diplomatic and consular dispatches may be carried without a performance of un-neutral service or subjecting vessels to the penalties of such service.

In the case of the CAROLINE, an American vessel captured by a British cruiser in 1808, when on a voyage from New York to Bordeaux, Lord Stowell, the greatest, perhaps, of England's admiralty judges, rendered the decision the ship, notwithstanding she carried dispatches from the French minister at Washington and a French consul to the French government at home.

In giving the decision he laid down the rule that the "carrying of dispatches for the enemy by a neutral was illegal, and defined dispatches as official communications of official persons on the public affairs of the government; but "he said," the neutral country has a right to preserve its relations with the enemy and you are not to conclude that any communication between them can partake, in any degree of the nature of hostility against you."

Private letters and communications relating to business affairs are not considered as forbidden to neutral vessels when bound to or from belligerent ports. They are prima facie innocent in their character.

Mail steamers carrying the flag of a neutral and under contract with a neutral government to carry the mail, may be placed in a peculiar position in time of war. The ship cannot be held to be otherwise than innocent in carrying a large quantity of mail

within which may be dispatches and information of service to a belligerent. Certainly, the owners and captains of such vessels cannot be held responsible for the contents of the mail bags which they carry, and they would violate the trust imposed upon them if they even endeavored to ascertain the nature of the communications which they carried. Hence, if dispatches of this nature are carried by regular mail steamers, they are exempt from confiscation. In 1870, France insisted upon the condition that an agent of the neutral state should be in charge of the mail matter and certify them to be free from improper and un-neutral letters. This is manifestly an impossible condition and the alternative seems to either grant entire immunity or to stop the mail communication entirely.

Case of mail of "Marblehead" carried by English steamer to Kingston and objections of Spanish consul at Kingston.--Mail private.

<u>The third thing forbidden a neutral vessel is to transport certain kinds of persons in the service of a belligerent.</u>

A neutral does not come within the forbidden limits if he transports on board a regular passenger steamer, ihdividuals who come on board as ordinary passengers, even if they should turn out eventually to be officers or isolated individuals in the service of one or the other of the belligerents. In the case of the Friendship, Lord Stowell stated, that no British tribunals had ever decided against a neutral vessel for carrying military officer in the service of an enemy, if he went as an ordinary passenger and at his own expense. But naval or military persons coming on board in that character and being transported by a neutral vessel at the expense of a belligerent government, subject this vessel to capture and confiscation.

In the case of the Orozembo, a neutral American vessel, Lord Stowell condemned the vessel because she was chartered to take three military persons of distinction and two court officials of the Dutch government, a belligerent, to Batavia. There were also on board a lady and some persons in the capacity of servants making in all seventeen passengers. He held that the vessel acted as a transport, notwithstanding the small number of people on board, using the words the "To send out one veteran general of France to take command of the forces at Batavia might be a much more noxious act than the conveyance of a whole regiment.

The fourth case is important in the light of the value of auxiliary ships in a modern naval campaign, especially where a belligerent had no coaling and repair stations.

The penalty for unneutral service is seizure and confiscation of the offending ship and any part of her cargo that belongs to her woner. Her liability to capture commences when the unneutral service begins and continues until it is finished. If a vessel is forced to become a transport she is liable to seizure unless the captain refuses to navigate the ship and to prepare her for the service. Any contract made to enter the enemy's service would be of itself evidence sufficient for condemnation. Int the performance of any unneutral act without contract or agreement, ignorance alone will not save the shipunless it is plainly excusable ig ignorance.

There are two famous cases that come within the limits of this subject and may properly be discussed--One is the case of Messrs Mason and Slidell during our civil war

and the other is the destruction of the English steamer Kowshing in the late Chino-Japanese war.

The first case-that of the Trent, occurred on the 8th. of November,1861. The Trent, an English mail steamer, making a passage from Havana to St.Thomas, was stopped in the Old Bahama channel, by the U.S.S.San Jacinto, under the command of Captain Wilkes; and Messrs Mason and Slidell ch their way as agents of the Confederate government to France and England, were taken on board the San Jacinto by force and held there as prisoners until the vessel reached Boston, where they were transferred to Fort Warren. The Trent was allowed to proceed upon her voyage, warlike feeling was aroused on both sides of the Atlantic. A demand was made for the return of Mason and Slidell by the British government with a suitable apology. The offense against Great Britain was from the fact that four individuals were taken out of a British ship pursuing an innocent voyage from one neutral port to another, on the high seas.

with their secretaries,

The confederate agents were surrendered by Mr.Seward; the grounds stated being that they were contraband of war and that they could not be legitimately separated from the ship which should have been seized and sent to a prize court for adjudication.

Earl Russell,in answer to this, said that the persons captured were not contraband of war as the Trent was pursuing a regular voyage and was bound for a neutral port and that the office and character of the persons captured were not of a contraband character.

Dana says as to this case that it can be considered as having settled but one principle and that was "That a public ship though of a nation at war, cannot take persons out of a neutral

vessel at sea, whatever may be the claim of her government on those persons."

But Mr.Thomas L.Harris, an American writer, in a book published a short time since, and devoted wholly to the narrative and to a discussion of the Trent affair, sums up very cogently the whole affair. To him, the following general conclusions seem to be warranted:--

1. The commissioners are were not contraband of war in any sense of that term.

2. Their dispatches being of a non-military character were not contraband of war.

3. A neutral power is entitled to hold necessary informal relations with an unrecognized(?) belligerent.

4. The Trent had in no way violated her duties as a neutral ship when she was stopped by the San Jacinto.

5.Captain Wilkes had an undoubted right to stop and search the Trent for contraband of war. In the absence of any thing of this character only resistance to the right of search would have made the Trent liable to capture.

6. In any event, Captain Wilkes had no right to seize the persons or dispatches of the confederate commissioners while they were on board the Trent on the high seas.

7. Viewed solely from the standpoint of international law, sound reasons were not given for the surrender of the commissioners by Secretary Seward.

With the above I find myself in accord, but in this entire controversy the difference between contraband of war and unneutral service is lost sight of. This, perhaps,is not strange, however, as the recognition of this difference is only a matter of recent years.

The demand and general action of the British authorities was offensive in tone notwithstanding that it had been modified by the intervention of the Prince Consort. This tone of the British dispatch was probably due to the supposed weakness of the United States, at that time just entering into the dark period of attempted separation and the throes of a mighty civil war.

Kowshing Case

The case of the Kowshing was as follows:--

The Kowshing was an English steamer, engaged in the Chinese coasting trade under the management of Jardine, & Co.. She was chartered by the Chinese government before the outbreak of hostilities with Japan, but at the time of the controversy and during the strained relations existing just before hostilities, to carry troops from Tientsen to Korea. In this capacity she was one of ten transports engaged in similar service, though for different parts of Korea. It has been stated, and so far as I have been able to learn with out contradiction, that the Kowshing was chartered at War risks and with indemnity promised in case of loss by enemy. As a matter of fact a compensation was afterwards paid at the demand of the English government, to the sufferers on board who were English subjects.

The Kowshing had on board about 1200 chinese soldiers with arms and ammunition; two Chinese generals, one European officer ca-Major Von Hanneken, a German officer who had been employed in a military capacity by the Chinese for many years, and twelve field guns. The destination of the Kowshing was Asan, a place not far from Chemulpo, and on the morning of the 25th. of July, 1894, about 9 A.M., when entering the Corean Archipelago, the Kowshing sighted several small vessels--a small chinese dispatch vessel

and three Japanese vessels, one of the latter being the Naniwa who firing two blank charges across the bows of the Kowshing, stopped her and ordered her to anchor, which she did in 11 fathoms of water. The Naniwa then steamed away and communicated with her consorts and Captain Galworthy of the Kowshing signalled for permission to proceed, but was refused by signal. A boat then came from the Naniwa, boarded the Kowshing and examined her papers. The Master of the Kowshing was asked if he would follow the Naniwa, to which he replied that he could not do otherwise, but would do so under protest.

The officer left the ship, and being still at anchor shortly afterward the Kowshing was ordered by the Naniwa to slip or weigh immediately. The Chinese generals, learning the meaning of the signals, objected to their being obeyed. Being told the uselessness of resisting they said they would rather die than obey Japanese orders and as they had a larger force of men than the Japanese they would fight than surrender. Being told that if they did fight the foreign officers would leave the ship, they gave orders to their soldiers to kill the foreigners if they obeyed the Japanese or attempted to leave the ship. A signal was then made to the Naniwa to send a boat, and the officer of the boat, who remained at the foot of the ladder was told of the circumstances and that the Kowshing was a British ship; had left Taku before a declaration of war and that the Chinese insisted upon returning to Taku. The boat then returned and upon her arrival signal was made for the Europeans to leave the ship at once. Answer was made that Europeans were not allowed to leave and asking for a boat to be sent. Reply was made by the Naniwa that a boat could not be sent. The Naniwa hoisted a red flag at the fore and discharged a torpedo

which missed the Kowshing, and then a broadside followed. The ship sunk either by this broadside or by a second torpedo or broadside in about half an hour and the firing continued upon the Chinese adrift in the water; the Chinese themselves on the Kowshing firing both at their own countrymen in the water and at the Europeans. The boats of the Japanese vessel were lowered and rescued what Europeans they could, but fired upon the Chinese in the water not attempting to save them. The firing commenced about 1 P.M., and finished about 2.30 P.M. The lives lost were in number over 1000, several of whom were Europeans belonging to the ship.

About two hours before the meeting of the Kowshing and the Japanese men-of-war, an engagement had taken place between these vessels and two Chinese men-of-war, the Tsi-Yuen and the Kwang-Yi, one being crippled and run into shallower water, the other escaped and passed the Kowshing with a Japanese flag flying over a White flag. The small Chinese dispatch vessel Tsao-Kiang, from Chefoo for Chemulpo, was also captured by the Akitsushima.

Several questions of International Law are involved in this case. The first is as to a violation of international law on the part of the Japanese in commencing hostilities without declaration of war, as they did at 7 A.M., on the 25th. of July. As to the firing of the first gun there is some dispute, but I think it reasonable from the circumstances, as they are given by various authorities, to consider that it was done by the Japanese.

Matters had been for some little time tense between the two countries. The occasion of the war was the situation in Korea, a Japanese force was already in Korea, at the capital, and there was a Chinese force in Asan, as well as at the capital. The Chinese troops leaving Taku in transports were sent in two directions--one body of transports to the Yalu river to create an army

and to move upon the Korean capital and the Japanese force from the North and West, and the other body of troops in the Kowshing was bound for Asan to reinforce the Chinese force already assembled there. The position of the Japanese in Seoul, the capital, might easily have become critical between these forces, no matter under what pretext the Chinese troops were sent. On the 14th. of July, the Japanese government wrote as follows to the Chinese government as represented by the Tsung-li-Yamen or Board of Foreign Affairs--"The only conclusion deducible from the circumstances is that the Chinese government are disposed to precipitate complications; and in this juncture the Imperial Japanese government find themselves relieved from all responsibility for any eventuality that may, in future, arise out of the situation. On the 23rd. of July, the Chinese transports left Teku and the same day the Japanese squadron of which the Naniwa was one, left Sasebo, Japan, for Chemulpo. On the morning of the 23rd. of July, an attack was made upon the Korean palace by the Japanese troops in the capital, which made the Japanese [illegible] of the capital and the government. This was the first blow of the war.

Under the circumstances, with war confidently expected, by foreigners between China and Japan, with troops being sent to Korea after an unsettled controversy, it does not seem that Japan acted outside the rules of international law in its commencement of hostilities without declaration on the 23rd. and the 25th. of July, and in the capture of the Kowshing. The Kowshing was chartered to the Chinese government knowing the probability of hostilities, there was no proviso making the charter void in case of hostilities, and after leaving the Pei-Ho river she was engaged in a mission which at any moment might be warlike service to a belligerent, unneutral in its character and subjects to all the

risks of war.

A second question has been linked with the first and that is that though a ~~declaration~~ declaration of war may not be necessary before war so far as the belligerents are concerned, ~~it is necessary~~, it is necessary so far as neutrals are concerned. But the notice to neutrals is not at any time a necessity. It is at best a convenience and never an obligation. That one belligerent should should have its safety endangered or the success of its military or naval operations rendered doubtful until neutrals are duly notified is unreasonable. Especially is this unreasonable, when the threatened danger comes from the unneutral service itself. The right of self preservation certainly comes in play at this time and as in the case of the Caroline, would justify even the invasion and violation of neutral soil.

A third question has been advanced and that is as to the right of the Japanese commander to destroy a neutral vessel without due adjudication and trial by prize courts. It is claimed that ~~the~~ he should have been captured in the usual way and brought to the nearest Japanese port for trial.

This is to naval officers especially an interesting question. The usual way ~~is~~, of course, is a possible way with reasonable antagonists--a capture with a prize crew and a surrender of the ship, or a close following of the motions and orders of the captors by the captured ship.

The Kowshing was under peculiar conditions. The Naniwa was, as it has been termed, mechanically superior as a ship to the Kowshing, but personally and numerically her forces were outnumbered by the armed Chinese on the Kowshing, who virtually took possession of the ship, rendering her English officers and her regular crew

unable to move or manoeuvre her. She then became in every way a hostile vessel and a hostile force. In the possession of a belligerent who would not obey directions and who announced a determination to die rather than to surrender, the Kowshing was a fair object for attack, but an attack tempered by the existing circumstances. A destruction of the vessel does not seem to have been necessary by the surrounding circumstances; there was no emergency existing and fire had not been opened from the vessel upon the Japanese. There was no force near by threatening the three Japanese vessels at the time as the Chinese vessels of war encountered during the day were either captured or dispersed. If the disability of the propeller or rudder would not have brought the Chinese on board to terms or of they opened fire upon the Japanese, then more drastic measures could have been taken. I do not blame the Japanese under the circumstances. They had not been used to civilized warfare; they had not felt their strength or the weakness of the Chinese at that state of the war and both international war and modern armaments were novelties.

As their firing upon the Chinese in the water, there is little to be said in their behalf. No endeavor was made to save the Chinese and this action, with the massacres at Port Arthur, goes to show that they have not as yet attained the sense of fair play and humanity exhibited at least by the Anglo-Saxon nationalities in war as well as in peace.

So far then as the right under international law was concerned, to destroy ultimately a neutral vessel like the Kowshing I think there is little doubt. A neutral vessel so closely identified with the enemy and in the enemy's control is to all intents and purposes an enemy's vessel and should be liable the same risks. A neutral in the ranks of one belligerent is in war time an enemy to the other.

The Japanese government has stated officially to the British government that if it could be definitely established, that the sinking of the Kowshing was a violation of international law, reparation would be made. No attempt by the British government has been made to do so.

---------oOo---------

BLOCKADE

Blockades may be either military or commercial, sea or land.

Asmilitary blockades they may consist of land blockades or investments of an inland town, land and sea investments of a sea port, or a masking and containing of an enemy's fleet by another fleet in a military port, naval arsenal, or an anchorage where commerce does not exist.

A commercial blockade may be of one important seaport or of an entire coast or island. It may be of the entire sea front of an enemy with a view to cut off external supplies and foodstuffs. Notwithstanding occasional efforts to abolish commercial blockades they are likely to be used whenever the circumstances justify it and the belligerent desiring it has that great naval superiority that will alone permit its establishment and continuance.

The circumstances of a land blockade are so different from that of a sea blockade, as to take it out of consideration of the blockades about to be treated. A land blockade is carried on upon territory which is for the time under the jurisdiction of the blockading force and hence matters purely of an international character do not appear; but a maritime blockade exists

not only in front of a commercial port or ports, generally open to international trade, but extends over littoral waters through which innocent passage of neutrals vessels is allowed and reaches the high seas, the common territory and highway of all nations. This fact makes the question of sea blockade one closely connected with the trade and shipping of neutral nations; in fact as a rule those who are generally engaged in the evasion of blockade in vessels of size are apt to be neutral subjects; and the questions concerning sea blockade are hence questions largely international in law and scope.

It has been claimed that the effect of the cessation of trade caused by blockades will cause more harm to the neutrals than good to the belligerents. That depends, of course, upon the situation of the war and the circumstances of the case. When the land frontiers of a country touch those of civilized and neutral states with connecting railway systems the injury to the belligerent blockaded is not great; but if the seaports are the principal means of communication with the outside world and the neighboring neutral state or states are poor and undeveloped, the effect of a general blockade, as upon our southern states, is powerful and wide reaching.

A blockade being an act or operation of war, it can be established not only by a state, but is not accorded to a state of insurgency alone. The United States refused to recognize the establishment of a blockade by the Brazilian insurgents of the port of Rio, notwithstanding their control of the waters of that vicinity.

Besides seaports, and roadsteads, rivers can, of course, be blockaded at their mouths, but if a river is bounded partly by neutral territory or leads to internal neutral ports or countries, it cannot be blockaded. The Federal Government, for instance, during the civil war, could not blockade the Rio Grande, as there were ports upon that river situated in neutral territory.

The establishment of a blockade being an act of sovereignty of great importance, especially as it interferes with the power of trade of neutrals, should be instituted only by the government directly of the belligerent or by a commander-in-chief to whom the power of establishing a blockade has been directly or indirectly delegated. Havana--Manila/

blockades must be notified.

It is necessary that a neutral shall have knowledge of a blockade before he can suffer any consequences for a violation or attempted violation of such blockade. This notice can be conveyed in several ways. The blockading power may give notice of a public proclamation, or it may give formal notice to the government of the neutral or special notice at the early establishment of the blockade may be given to a neutral vessel. Besides this, the the notoriety notoriety of the of the fact has been considered an sufficient notice in cases like our southern blockade. A notice to a foreign government is a notice to all of the individuals of that state, as it is the duty of the foreign government to convey the notice to all of their subjects or citizens.

Besides, the notice of the establishment of a blockade it is justly held that the blockading belligerent should given notice of the for final and final discontinuance of the blockade. This is no more than fair to neutrals and their trade.

There is a difference in the practice of nations as to the amount and manner of notification of a blockade. This difference follows the general lines of difference as to practice in maritime war--the Continental idea as opposed to that generally followed by Great Britain and the United States.

The Continental or French practice is to give a diplomatic notice to the neutral governments of the blockade and also an individual notice from a vessel of the blockading force at the port. Each neutral vessel is warned off and the warning indorsed upon the certificate of nationality or other of the ships papers with date, locality, etc. A repeated attempt to enter then subjects the vessel to capture.

Our own practice follows that of the English in general, and in some cases as in continuous voyages, exceeds it. It recognizes as valid, two forms of blockade: one in which notice has been duly given and which is established in fact and one de facto, which begins and ends with the actual establishment. In the former case, after due general notice, ignorance of the blockade is not an excuse for a departure for the blockaded ports or for an appearance in its vicinity. Being bound to a blockaded port, or being manifestly out of a course to its port of destination is considered evidence generally of an intention to violate the blockade.

As to a de facto blockade, local and more temporary in nature, a vessel is not seized for attempting to enter a harbor unless it has been previously warned off.

If the blockade has not been proclaimed, it is not usual to notify the authorities and consuls of the port blockaded concerning the establishment of the blockade. The cessation or the re-establishment of the blockade should be notified in similar

manner to the local authorities and consuls of the port.

Certain time is generally granted for vessels in the blockaded ports to discharge or to load and depart from the ports blockaded. As A period of from fifteen to thirty days is often given for this purpose. This should be included in the formal declaration of blockade, which, by the code recommended by the Institut de Droit International "Is to consist of a statement of the limits of the blockade by latitude and longitude, the precise moment of its commencement and also the period allowed to merchant vessels to either discharge or load cargo, or to leave in ballast. The proclamation of President Lincoln in 1861, announcing the blockade of certain ports in the south, contained a provision for warning vessels which approached the blockaded ports with a view to enter; but this was construed to to those only who were igno rant of the blockade and did not protect a vessel that sailed for a blockaded port with knowledge of the blockade.

A declaration of a blockade, without the establishment of an effective blockade does not constitute a blockade.

Sir William Scott says on this point that these things must be proved before a violation of blockade can be noted:--

1. The existence of an actual blockade.

2. The knowledge of the party.

3. Some act of violation.

The knowledge of the party having been acquired by one notification the next question is to the existence of an actual blockade, or as it was termed in the Declaration of Paris---

"The existence of an effective blockade."

A blockade te be lawful and effective must have the actua actual presence of the blockading fleet or force. This force

must be present in sufficient force to make it hazardous for any vessel to attempt to enter the port.

The best definition given as to an effective blockade is that in the treaty between Italy and the United States of 1871, which states that "A blockade to be legal must be so invested as to create an evident danger to attempt to enter the port.

The actual force necessary to keep an effective blockade varies with the circumstances. Attempts to regulate it by treaty are unsatisfactory. The naval force can be assisted by batteries on shore or the main reliance can be of shore batteries assisted by a naval force sufficient to warn off or pursue any vessels attempting to run the blockade. It is not necessary that vessels should be invariably kept out of the port. An occasional evasion does not prevent a blockade from being considered effective in the terms of international law.

The armed neutral powers in 1780, and 1800, harassed by the paper blockades then decreed by France and England, declared that no port should be considered blockaded unless there was evident danger in entering from the proximity of a belligerent squadron and that the blockading vessels must be stationary.

Nelson in his dispatches discussing his blockade of Genoa, answers the latter requirement satisfactorily. In Mahan's life of Nelson it is stated that "Fault was found with the blockade of Genoa on the ground that it did not comply with the requirements of international law--the complaint resting, apparently, on the statement that the blockaders could not be seen from Genoa. Nelson replied that the proof of evident danger to vessels seeking to enter or leave, rested on the fact that captures were made; and it is,

on the face of it, absurd to say that there can be no danger to a vessel seeking to enter a blockaded port because the blockading vessels are not visible to from the other.- latter. Much more depends upon their number, disposition and speed."From my knowledge of Genoa and its gulf" said Nelson " I assert without fear of contradiction that the nearer ships cruise to Genoa the more certain is the escape of vessels from that port or their entrance into it insured. I am blockading Genoa, according to the orders of the Admiralty, and in the way I think most proper. Whether modern law or ancient law makes my mode right, I cannot judge; and surely of the mode of disposing of a fleet, I must, if I am fit for my post, be a better judge than any landsman, however learned he may appear." This is nautical common sense and is in accord with our practice and that of the English, which states that a blockade to be effective must be of such a nature as to make it dangerous for the blockading vessels to enter. Empirical rules, prescribing numbers of vessels, their situations, etc., etc., as continental powers have done are not practical. As Lawrence says "We are often told, for instance, that the blockading vessels must be stationary, sometimes that they must be anchored, and even that the approaching ship must be under the cross fire from at least two of them. These statements are among the curiosities of the literature of international law, but they have no connection with the hard facts of international relations.

The evasion of a blockade during the temporary absence of the blockading squadron, owing to bad weather or for the purpose of a chase or an engagement with an enemy does not render a blockade invalid or ineffective.

It is not illegal to close some of the channels to a harbor by mines, hulks or other obstructions. It is legitimate warfare notwithstanding the protest of Earl Russel as to Charleston in 1861. If a belligerent, as an English writer says, can knock a fortified port to pieces by bombardment, he certainly can obstruct or destroy their approaches by sea.

If a home port is in possession of rebels or an enemy, trade with it cannot be stopped so far as neutrals are concerned by municipal regulation. It must be done by the belligerent operation of blockade. So long as the domestic port is taken from the government by force, its trade must be stopped by an effective blockade or the port regained by force.

If the belligerent captures or recovers a port, then the blockade is held to cease, as the belligerent can cause the trade of the port to be stopped by municipal regulation. After the capture of the blockaded port any neutral bound to that port becomes innocent and not liable to capture.

Breach of blockade--its penalty and the extent of its liability.

A breach of blockade consists of an actual entrance or egress, or an attempt to enter, the blockaded port knowing it to to be blockaded. An attempt to enter is as much a breach of neutrality and blockade as an actual entrance into the port.

This attempt is not limited to the movement of the ship of the port, but it holds to the whole passage of the vessel from the moment she sails for the port or has been obtained the knowledge of its blockade. It commences with the leaving port and ends only with the return to port and the completion of the voyage. If a vessel clears provisionally and honestly for a distant port that

is blockaded with an alternative port in case of the continuance of the blockade. She may be exempt from capture or condemnation.

If a vessel is driven into a blockaded port by stress of weather she is not liable to capture provided she communicates properly with the commanding officer outside and does not discharge or receive cargo--it must be brought out intact. The necessity, however, must be evident, immediate and pressing. Neutral vessels of war are generally allowed to enter and depart from blockaded ports, but this is conceded to be a matter of courtesy rather than right.

A license from the government or proper authorities of the blockading state is sufficient justification to enter a blockaded port. If there is reason to believe that a neutral government is about to goto war with the blockaded state, a vessel of that nationality may properly be permitted to leave the blockaded port.

The usual penalty for a breach of blockade is a capture and confiscation of the offending ship and its cargo. If the owner of the cargo is not owner of the ship and can prove that he was ignorant of the blockade of the port of destination, the cargo can be released. The burden of proof rests,however, with him.

The extent of the liability of the ship,it has been said, extends to the end of the return voyage. If hostilities cease, however, or the blockade is raised in the mean time, the liability to capture and condemnation ceases also, even if the vessel is still on the high seas.