

usage of nations, for the use or service of either of the contending parties. The penalty for the breach is the risk of capture and condemnation, a fate from which the Government expressly disclaims the power or desire to protect.

The warning given above, which forms an excellent précis of the law of nations on the subject of contraband, forbids the transportation, but not the trade. The traffic is lawful enough, and if the traffic involve ocean carriage it is only on the high seas that the ship and cargo may find itself in peril. But such carrying, while exposing the property of the individual citizen to the hazards of war, and the possibility of loss without the protection of his Government, does not involve the latter in any breach of national neutrality. As has been said, neutrality is not a change but a continuation of a former state, and the breaking out of war does not make that unlawful which was lawful before it.

"A neutral nation," Chancellor Kent says, "has nothing to do with the war, and is under no moral obligation to abandon or abridge its trade. . . . The trade by a neutral in articles contraband of war is, therefore, a lawful trade, though a trade, from necessity, subject to inconvenience and loss" (a).

War undoubtedly confers certain rights on belligerents which interrupt peaceful trading. Either belligerent nation may declare goods to be contraband which were not contraband before or blockade the enemy's ports, in which cases traffic carried on by neutrals must suffer some disturbance.

Lord Stowell lays down the rights which a belligerent may exercise against a neutral as follows:—1. To send on board for the ship's papers. 2. To detain such vessels as are carrying cargoes of a contraband character, either wholly or in part, to an enemy's port. 3. To bring in for a more deliberate enquiry than could possibly be conducted at sea, even those vessels which profess to carry cargoes to a neutral destination. But these rights are preliminary only. The search, the detention, and the bringing in, are all merely steps towards a judicial determination, and the question to be decided is always whether what is carried is contraband. And contraband is a term which is very elastic. In fact goods may be made contraband by the declaration of one of the contending nations, provided they are of such a nature as to afford

(a) *Seton v. Low*, 1 Johnson's cases, p. 1.