

By Article XVIII contraband was excepted from the application of Article XVII.

The provisions of this article are three. First, if one of the parties should be at war, the subjects of the other party may continue their commerce freely, irrespective of the ownership of the cargo, even to enemy ports. "Free ships free goods" is not accepted in so many words; nor is it to be derived from a provision very common in the early treaties allowing free commerce with the enemy. It is the necessary inference from the recognition of a right of free navigation irrespective of the ownership of the cargo.

Secondly, the principle is repeated and reinforced: this trade may be carried on, not only irrespective of the ownership of the cargo, but also irrespective of the ports of departure or destination, even though both may be enemy ports. In other words, the subjects of the party not at war may trade between the ports of the enemy of the other party. The principle is extended to wars in which the two parties are engaged with a common enemy. Thirdly, the principle of "free cargoes" is extended to enemy subjects on board vessels belonging to the other party. Unless they are soldiers in the enemy's service, they are to be free persons.

But this third provision is stated in a long and complicated paragraph in which there is an express reference to "free ships free goods," and it is this paragraph which has given rise to much misconception. It is assumed that it condenses into this formula the effect of the first part of the article.

In order to understand this paragraph it is necessary to examine the earlier treaties between France and England.

In the Treaty of Westminster, concluded between Cromwell and Louis XIV in 1655, the question was dealt with very superficially in the following articles:—

"XV. That for the space of four years to come, or until other stipulations are agreed on, the ships of either nation may carry commodities of any kind to the enemies of the other, excepting to places besieged, and excepting military stores, in which cases they shall be deemed lawful prize."