

penalty of confiscation, and the modern rule is that the cargo alone is condemned, while the vessel is visited with no other penalty than the loss of time, freight and expenses (*p*), unless the owner of cargo and ship be the same, or if the shipowner is privy to the carriage of the contraband. The injuriousness of the trade results from the nature of the goods and their ultimate hostile destination and not from the mere fact of ocean transport, and the belligerent's desire is only to prevent the goods going to the enemy if he can. No actual obligation to the belligerent is violated if the contraband reaches its destination, for his right is merely that of caption if he can find the goods in transit.

It is true that there are opinions to be found in some of the English cases, and in some English text writers, which do not express this distinction, but enough of authority remains to suggest the adoption of the principle of the American civil war cases as applied to contraband.

That doctrine is given in the language of Chief Justice Chase :—
 "Contraband merchandise is subject to a different rule in respect of ulterior destination than that which applies to merchandise not contraband. . . . Articles of a contraband character, destined in fact to a State in rebellion or for the use of the rebel military forces were liable to capture though primarily destined to Metamoras." In short, bona fide neutral destination is necessary to save contraband goods from capture though the ship be on a voyage to a neutral port.

In the *Inima* case (*q*), which is the leading case on the doctrine of hostile destination as necessary to constitute contraband, and on which *Hobbs v. Henning* is largely founded, Lord Stowell says :—"This is a claim for a ship taken, as it is admitted, at the time of capture sailing for Embden, a neutral port ; a destination on which, if it is considered as the real destination, no question of contraband could arise." It is to be observed that this case was one of blockade and Lord Stowell's subsequent remarks are to be read with that in view. In fact the delictum which he was asked to impute to the owner of the goods was intent to break a blockade. The *William*, (*r*) an early but very important case on

(*p*) Hall, p. 671.

(*q*) 3 Rob. 167.

(*r*) 5 Rob. 385.