PREFACE

THERE must be some fundamental principles governing the relations of belligerents and neutral merchants; they cannot be regulated by a series of rules which have all the appearance of being haphazard, unless some recognised principle underlies them. But, even when Congresses meet for the express purpose of arriving at an agreement as to the rules, we look in vain for some statement as to what this principle is. Meanwhile, many undigested theories are advanced, based on very doubtful hypotheses. Of these the foremost, which has taken hold of many international lawyers, is that neutral commerce with the belligerents ought not to be interfered with, but must be allowed to continue in war as in peace, with exception only in the case of contraband of war and trade with blockaded places. On this the alleged right, as distinguished from treaty agreement, rests that "free ships" make "free goods."

There is also much insistence on the doctrine that the rules of international law are based on the common practice of nations. If this means all nations, so great is the divergence in actual practice that few rules would survive. If it means the practice of many, or the majority of nations, then, in 1780, England would have been in a minority of one, and her supremacy at sea would have passed away. Yet there must be, and is, some test of right and wrong. It is to be discovered by a study of what nations did, as belligerents and neutrals, in time of war, and testing it by the motive which lay behind; for motive is more easily judged than action. The motives are written very plain in history: abundant war profits for the neutrals, essential assistance to the enemy. Belligerent action, whether it were the seizure of contraband cargoes or of ships running