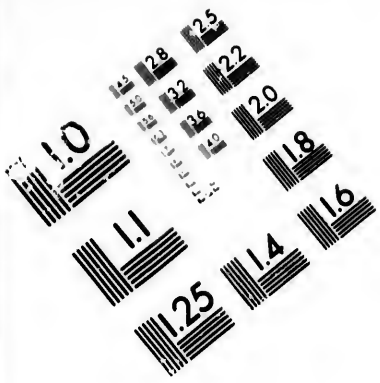


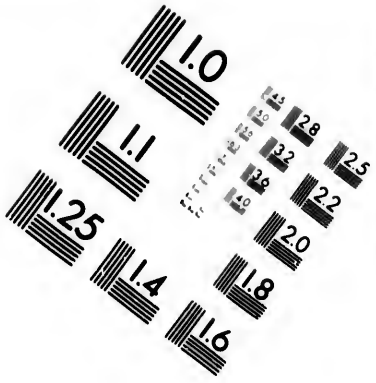
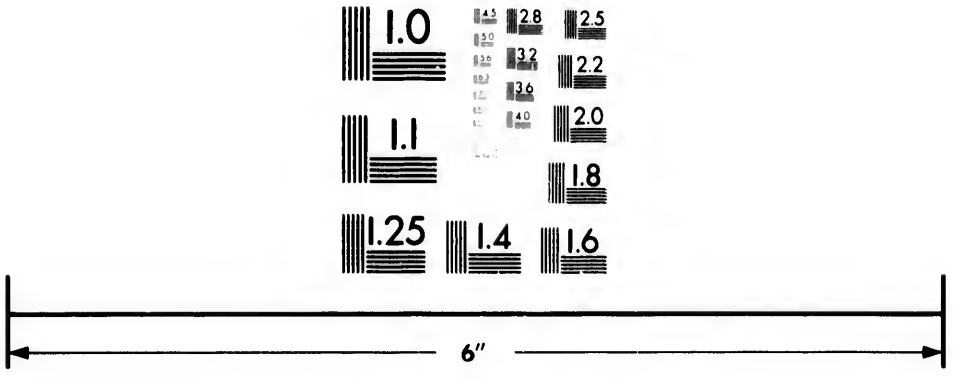
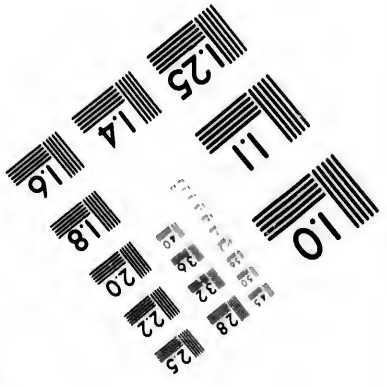


IMAGE EVALUATION TEST TARGET (MT-3)





Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☐ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
					✓						

The copy filmed here has been reproduced thanks to the generosity of:

National Library of Canada

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ▽ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:

L'exemplaire filmé fut reproduit grâce à la générosité de:

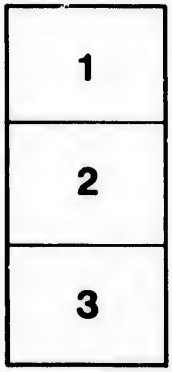
Bibliothèque nationale du Canada

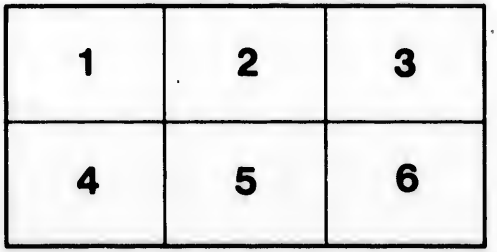
Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustretion et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "A SUIVRE", le symbole ▽ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.





ON THE LAWS OF BLOCKADE;

A THESIS

FOR THE

Degree of Doctor of Civil Law,

PRESENTED TO

McGill University, Montreal,

BY

THOMAS NICHOL, B.C.L.,

February 9, 1887.

Montreal:
PRINTED BY JOHN LOVELL & SON.
1887.

TABLE OF CASES.

ON THE LAWS OF BLOCKADE.

The Blockade of the Middle Ages differed radically from the Blockade of to-day. When about to engage in a war the belligerents simply forbade all commerce on the part of neutrals with the enemy, and neutrals contravening this mandate were themselves treated as enemies. This state of things, which, with some slight modifications, lasted till the beginning of the seventeenth century, was only possible so long as commerce was in its infancy and maritime warfare, at least on a great scale, was almost unknown.

These ideas as to the rights of belligerents passed away with the increased commerce of the seventeenth century, which was distinguished by long-continued maritime wars, and gradually the modern doctrine of Blockade was formulated, that when a port is closed by a hostile squadron in sufficient force, no neutral shall trade with that port under penalty of confiscation of vessel and cargo. Thus Grotius tells us that during the long and bloody war carried on by the United Provinces for the recovery of their liberties, they refused the English permission to trade with Dunkirk before which the Dutch fleet lay. (a)

But even after this modern Doctrine of Blockade was developed to a considerable extent, standard writers on International Law devoted very little space to it. Thus Vattel gives it precisely *thirteen lines*, the essential part being as follows :—"All commerce is entirely prohibited with a besieged town. If I lay siege to a place, or only form the blockade, I have a right to hinder any one from entering, and to treat as an enemy whoever attempts to enter the place, or carry anything to the beseiged, without my leave ; for he opposes my enterprise, may

(a) Vattel's Law of Nations, B. 3, Ch. 7, § 117.

contribute to the miscarriage of it, and thus cause me to fall into all the evils of an unsuccessful war." (a) Martens, still more economical of space, gives this important doctrine just *six lines !*

Towards the close of the eighteenth century the stronger maritime powers, notably Great Britain and France, endeavoured to stretch the doctrine of Blockade unduly. Great Britain, for instance, would declare the French coast blockaded from Brest to Dunkirk, station a frigate here and there, and in all seriousness endeavor to make the mercantile world believe in this blockade.

Blockades of this nature led to the famous declaration by the Empress Catherine II. of Russia, that "the blockade of a port can exist only when, through the arrangements of the power which attacks a port by means of vessels stationed there and sufficiently near, there is an evident danger in entering." Hence arose the *Armed Neutrality* which, in 1780 and again in 1800, asserted the rights of neutral commerce. In addition to this grievance concerning blockade, the Armed Neutrality claimed that Great Britain had enlarged the list of contraband goods beyond just bounds, that their merchant vessels had been subjected to vexatious examinations, and especially that the old rule that *neutral ships make neutral cargoes* had been systematically set aside.

The principles of this famous league may be thus summarized : 1. That neutral powers have a right to a free trade with the ports of the belligerent powers ; 2. that neutral vessels make neutral goods, that is, that enemy's goods found on board neutral vessels ought not to be confiscated ; 3. that no goods shall be reputed contraband which have not been so declared in treaties made with the belligerent powers, or one of them ; 4. that a place shall not be looked upon as blockaded, except when surrounded by the enemy's vessels in such a manner as to render all entrance manifestly dangerous ; and, lastly, that these principles shall serve as the basis of all decisions touching the

(a) Op. cit. B. III, Ch. VII., § 117.

legality of prizes. It will be noted that the section relating to blockade is marvellously similar to the statement of the Treaty of Paris, formulated two generations later—"Blockades in order to be binding must be effectual, that is to say, maintained by a force sufficient in reality to prevent access to the coast of the enemy."

Denmark was the first to join the league on June 9th, 1780; followed by Sweden, August 1, 1780; the United Provinces, January 5, 1781; Prussia, May 8, 1781; the German Empire, October 9, 1781; Portugal, July 13, 1782; and the Two Sicilies in 1783.

The Emperor Paul was the ruling spirit of the second Armed Neutrality, just as his mother had been of the first, and it was dissolved by his violent death. Finally, all the points of difference between these Neutral Powers and Great Britain were amicably settled, but the Mistress of the Seas did not abandon her peculiar views on the subject of Blockade.

Phillimore sarcastically remarks that "the most remarkable fact connected with the Armed Neutrality of 1780, is that *every one* of the powers composing this hallowed league for the maintenance of International Justice upon the principles of the Russian edict departed from the obligation which they had contracted as *Neutrals* as soon as they became *Belligerents*, and returned without shame or hesitation to the ancient law." (a)

But though the Northern Powers and their allies desisted from their opposition to the policy of Great Britain, the French Government intensified its opposition. In the year 1796 all the ports of Genoa and of the Roman States were closed to British commerce by special treaty with the French Republic, and in 1801 Naples and Portugal were induced to adopt the same line of action.

Still Great Britain did not abate one jot of her pretensions, so in 1806, Prussia, which at that time held Hanover by the grace of Napoleon, was forced by him to close all her ports to British

(a) Phillimore's Commentaries upon International Law, CXCI.

shipping. Soon after Prussia broke with France, and after the disastrous campaign of Jena the Emperor Napoleon (Nov. 21, 1806) issued the Berlin Decree declaring the whole of the British Empire in a state of blockade; and all vessels, no matter of what country, trading with British ports, were declared liable to capture by French cruisers. At the same time British vessels and goods were shut out from all the ports of the French Empire and also from the ports of all the countries under the sway of the Emperor of the French. By a subsequent Decree all neutral vessels were required to carry *certificates of origin*, that is to say certificates from the French consuls of the ports from which they sailed that *no portion of the cargo was British*—really, a revival of an expedient which originated with the Directory in the year IV. of the French Republic (1796).

The Berlin Decree was promptly followed (Jan. 7, 1807) by a British Order in Council, commanding the seizure of all neutral vessels trading from one hostile port to another having enemy's goods on board. To this, the French Emperor replied by new efforts to enforce the Berlin Decree. A number of neutral vessels were captured and confiscated for violating its provisions, and the manufacturing interests of Great Britain seem to have suffered severely. The British government issued fresh Orders in Council (Nov. 11 and 21, 1807), declaring the ports of the French Empire and of all its tributary states in a state of blockade, and ordering the confiscation of all ships carrying French *certificates of origin* and of all ships attempting to trade with the ports blockaded. And this was backed by a navy carrying one hundred and eighty thousand seamen and forty thousand marines. Further, all neutral vessels purposing to trade with hostile ports, that is, *ports hostile to Great Britain*, were ordered in all cases to touch at a British port, pay custom dues there, after which they were, in certain cases, permitted to sail for their destination! And in all cases, vessels sailing from a hostile port—and all countries under French sway were counted hostile—were ordered in the first place to touch at the nearest British port.

These Orders in Council were followed (Dec. 27, 1807) by the Milan Decree, by which the entire British dominions, in all quarters of the globe, were declared to be in a state of blockade, so that all vessels trading with Great Britain or her colonies were liable to confiscation. Further provisions of the same Decree declared that all vessels making a voyage, for any purpose whatever, to Great Britain, or submitting to be searched by a British cruiser, or paying any duties or dues to the British Crown, had lost its right to its own flag, and, *ipso facto*, had become British, and that all such vessels, falling into the hands of French cruisers, or entering a French port, were lawful prize.

At this time, say from 1807 to 1812, so many of the Continental states had been absorbed into the French Empire, or were directly under its control, that the principal, nay, almost the only neutral power still remaining, was the United States of America; consequently, the Americans were the chief sufferers by these Decrees and Orders in Council by which, in reality, neutral powers were punished by the respective belligerents for the aggressions of their opponents. Accordingly, the American government applied to the French government, and obtained a kind of semi-official assurance that the obnoxious Decrees would not be enforced against American vessels. This was deemed satisfactory; but on application to the British Government, the American authorities were directed to insist upon a public renunciation by France of both Decrees.

Justly incensed at this treatment the American government proceeded to lay an embargo (Dec., 1807) on all French and British commercial shipping in American ports, and in March, 1809, Congress passed an Act forbidding all commercial intercourse with both Great Britain and France, until such time as these countries should remove their restrictions on neutral commerce.

In April, 1809, in consequence of the Spanish insurrection, a fresh Order in Council was issued which confined the blockade to France itself, to Holland and to parts of the German and

Italian coasts, opening all the rest of the coast blockaded by previous Orders in Council to neutral trade. By subsequent Orders the plan of licensing neutral vessels to proceed to hostile ports after having paid duties at a British one was extended and systematized, till at length no fewer than sixteen thousand licenses were issued in a single year.

But the Emperor Napoleon did not relax his *continental system* in the least, but owing to the deficiencies of the French marine, British goods were conveyed into France in neutral bottoms, and in 1810 the Imperial authorities ordered the burning of all British goods on French soil.

Finally, in 1812, the French government annulled all its obnoxious Decrees, and, on being informed of that fact, the British government rescinded all its Orders in Council. But, by this time, the government of the United States had declared war against Great Britain.

There can be no doubt whatever but that all these Decrees and Orders in Council were so many violations of International Law. The grand leading principle which regulates all such matters is that *no neutral power shall be annoyed or incommoded by any warlike operation which shall not have a greater tendency to benefit the belligerent than to injure the neutral*, and, very clearly, all these arbitrary extensions of the rights of war were calculated to sacrifice neutral rights to the retaliation of the belligerents.

And it seems to us, looking at the subject from a distance of time and possibly with cooler heads, that the reasoning, even of eminent publicists, on this subject is faulty and one-sided in the extreme. Even Lord Stowell could find no better reason than Napoleon's Decrees for condemning American vessels for trading with Italian ports which most certainly were not blockaded. "This retaliatory blockade" (if blockade it is to be called), said he, "is co-extensive with the principle; neutrals are prohibited to trade with France, because they are prohibited by France from trading with England. England acquires the

right, which it would not otherwise possess, to prohibit intercourse by virtue of the act of France" (*The Fox*; Edwards 321) And again in a leading case, that of *The Anthem*, in which he gives the standard definition of a legal blockade, he states that the Order in Council of the 20th of April in that year (1809) was, amongst others, issued in the way of retaliation for the measures which had been previously adopted by the French government:—"The blockade imposed by it is applicable to a very great extent of coast and was never intended to be maintained according to the usual and regular mode of enforcing blockades, by stationing a number of ships, and forming, as it were, an arch of circumvallation round the mouth of the prohibited port. There, if the arch fails in any one part, the blockade itself fails altogether." (1 Dodson, 425.)

During the long period between the close of the Napoleonic wars and the Russian war of 1854-56, the doctrine of Blockade remained in the position in which it was left by Lord Stowell, and during that war a British Order in Council permitted neutrals to trade to all ports and places, wheresoever situated, that were not in a state of blockade. Finally, the powers assembled in congress at Paris declared (April 16, 1856) that "Blockades in order to be binding must be effectual, that is to say, maintained by a force sufficient in reality to prevent access to the coast of the enemy." In all cases the question remains as to whether or not a blockade has been maintained in such a manner as to fulfil the terms of this declaration; but each case would require to be investigated on its own merits.

The older doctrine of Blockade excluded ships of war as well as merchantmen from blockaded ports, but during the war of the Rebellion the United States government permitted neutral ships of war to enter the blockaded Southern ports, and this is the only marked innovation of this doctrine that has been introduced in our day.

Lord Stowell's famous *three things* must ever remain the leading idea of the doctrine of Blockade, at least as understood by

British and American publicists. "On the question of blockade," he says, "three things must be proved: first, the existence of an actual blockade; second, the knowledge of the party; and third, some act of violation, either by going in or coming out with a cargo laden after the commencement of the blockade." (*The Betsey*, 1 Robinson, 92.)

Actual blockade is the essential element of legal blockade. The blockade of Havre was proclaimed by Great Britain, February 23, 1798, for the alleged purpose of preventing an invasion by the French; but as late as November, 1799, no blockade of Havre was known to the British naval authorities to be existing; between these dates, vessels were invariably permitted to pass in and out of that port. Many vessels were stopped and examined as to the nature of the cargo, and their destination, and on other points, but no objection appears to have been taken on the ground of blockade; some were proceeded against on other grounds, and others were released. The ship *Jungfrau Maria Schroeder* went into Havre in May, 1799, having been met by *The Stag* frigate, and suffered to pass unmolested; she came out again on June 14, and saw no ship for forty-eight hours, and was seized at last off the North Foreland, by *The Camperdown* cutter. On the claim, before Lord Stowell, for the restitution of the vessel, it was shown that on August 17, 1799, the British Admiralty transmitted orders to the captain of *The Atalanta*, "to proceed as expeditiously as possible to Havre, there to take under his command the ships he should find on that station, for the purpose of blocking up the coast, and watching the motions of the enemy, and protecting the island of St. Marcou till further orders," but it was not till September 27, that the Admiralty sent orders to this officer, "not to permit any vessel, whatever, to enter Havre." It was contended that this was the first declaration since November, 1798, that Havre was considered to be under a mercantile blockade, and that, consequently, between November, 1798, and the receipt of the Admiralty order of September 27, 1799, off Havre, the blockade

was to be considered as totally relaxed, which alone by the law of nations is held to operate as a legal cessation. "A blockade," writes Bynkershoek, "is virtually relaxed, *si segnius oræ observantæ sint.*" Lord Stowell, in restoring the vessel, said: "It is perfectly clear that a blockade had taken place some months before; and that the notification was communicated to the claimant's government, not only that a blockade would be imposed, but of the most rigorous kind; and I cannot entertain the least doubt that the orders which were given by our Admiralty were conformable to it. It is impossible to suppose that the orders for carrying into effect a great measure, so materially affecting other states, would not be given by government with the utmost exactness. Yet, I cannot shut my eyes to a fact that presses upon the court, that the blockade had not been duly carried into effect. A temporary and forced secession of the blockading force, from the accidents of winds and storms, would not be sufficient to constitute a legal relaxation. But here ships are stopped and examined and allowed to go in. The master of this particular vessel says, that, in coming out, he saw no ships for forty-eight hours. That might be accidental; but when he entered, they were on the station; yet no attempt was made to prevent him from going in. In other cases, also, it appears that no force was applied for the purpose of enforcing the blockade. There can be no doubt of the intention of the Admiralty, that neutral ships should not be permitted to go in; but the fact is, that it was not in every instance carried into effect. What is a blockade, but to prevent access by force? If the ships stationed on the spot to keep up the blockade will not use their force for that purpose, it is impossible for a court of justice to say there was a blockade actually existing at that time, so as to bind this vessel. It is in vain for government to impose blockades, if those employed in the service will not enforce them. The inconvenience is very great, and spreads far beyond the individual case; reports are eagerly circulated that the blockade is raised; foreigners take advantage of the information; the property of innocent persons is ensnared, and the honour of

our own country is involved in the mistake." (3 Robinson 147.)

All nominal blockades, variously styled, "paper blockades" and "cabinet blockades," are unlawful, as being stretches of belligerent rights, and it makes no difference whether they are or are not preceded by a proclamation. "A notice of blockade," writes Professor Bernard, "must not be more extensive than the blockade itself. A belligerent cannot be allowed to proclaim that he has instituted a blockade of all the ports of the enemy, within certain specified limits, when in truth he has only blockaded some of them. Such a course would introduce all the evils of what is termed a "paper-blockade," and would be attended with the grossest injustice to the commerce of neutrals. Accordingly, a neutral is at liberty to disregard such a notice, and is not liable to the penalties attending a breach of blockade for afterwards attempting to enter one of the ports which really are blockaded." (a)

The popular idea is that paper blockades are a British invention, but in reality the French were the first to hit upon that happy substitute for an efficient fleet. Thus she proclaimed a paper blockade of Great Britain in 1739, and again in 1756, in 1796, in 1797, and once more in 1800, but all these blockades were totally disregarded by the neutral powers. It is certain that at the present day, no prize court would condemn a vessel for breach of such a blockade.

Blockade, to use Phillimore's epigrammatic expression, arises from "the right of the belligerent to prohibit the commerce of the neutral with all besieged and blockaded places, and the duty of the neutral scrupulously to abstain from all intercourse with them." (b) The right of blockade is looked upon by all British writers on International Law as being one of the clearest and most incontrovertible rights of belligerents, but most Continental writers take a very different view of the matter, and there is at the present day a strong tendency to modify the harshness of

(a) Bernard's Neutrality of Great Britain, p. 231.
(b) Op. Cit. CCL., XXXV.

the doctrine of Blockade, as elaborated during the Napoleonic wars when Great Britain practically ruled the seas. On the one hand nearly all the British and American writers uphold the right of a belligerent to annoy the enemy, even though, within certain limits, he inflicts injury upon a third party. On the other hand many Continental writers uphold the doctrine that neutrals ought not to be interfered with at all, or at least to a very limited extent.

Blockade is a clear limitation of the rights enjoyed by neutrals during time of peace, for it is the assertion of the right of a belligerent to prevent the passage of all neutral vessels into a particular seaport at that belligerent's will and pleasure. Neutral trade suffers immensely by a blockade, when, as in the late civil war in the United States several thousands of miles of coast are blockaded, and Cauchy remarks that a blockade is "*la plus grave atteinte qui puisse être portée par la guerre au droit de neutres.*" (a)

The blockading force must be actually present, sufficiently near to the blockaded port to prevent communication, and this common-sense view of the matter has been confirmed by numerous treaties, particularly by that between Great Britain and Russia in 1801, which terminated the Armed Neutrality. But if the blockading force is driven off by a storm, the operation of the blockade is not suspended, and vessels attempting to run the blockade would be liable to capture and condemnation.

Blockade-runners are liable to capture at a great distance from the blockaded port. Thus during the war between Russia and Turkey (1854-56) the latter power proclaimed a blockade of the entire Russian coast of the Black Sea, and maintained that blockade by an adequate force. In addition, two cruisers were stationed in the Bosphorus, so that blockade-runners escaping the Black Sea squadron would almost certainly be captured before reaching their home-port. The owners of some captured blockade-runners, mostly Greeks, pleaded before the Turkish

---

(a) Cauchy, tom. II., p. 196.

prize-courts, that, having escaped the vessels stationed in the Black Sea they were no longer liable to capture. All were condemned, however, on the ground that they had not reached their home-ports when captured.

A blockade must be general in its effects, and belligerents cannot grant to each other, *or to the enemy*, privileges denied to neutrals. Thus during the Crimean war, the French, British and Russian governments permitted their subjects to trade at the Baltic ports of Russia at a time when they were blockaded by allied squadrons, at the same time that they endeavoured to exclude neutrals from such traffic. But in the test case of *The Franciska*, the Judicial Committee of the Privy Council held that such a blockade was not a legal blockade and that the confiscated vessels and cargoes must be restored. (a)

Blockades are not confined to sea-ports, for a roadstead may be blockaded, or the mouth of a river, or, in fact, any portion of hostile coast. In the year 1806, the Emperor Napoleon contended that "the right of blockade, according to reason and the usage of civilized nations, is only applicable to fortified places," and he challenged the right of Great Britain to "extend the right of blockade to unfortified cities and ports, to harbours and the mouths of rivers," and this view was supported by Luchesi-Palli, a leading Italian writer on International Law. But Massé, Ortolan and Manning all agree that the right of blockade applies to fortified places as well as to unfortified mercantile towns, and Wildman and Phillimore do not even mention the theory that blockade must be confined to unfortified towns. The great object of a blockade is not so much to compel the surrender of the place as to force the enemy, by pressure upon his financial and commercial resources, to listen to reasonable proposals for peace, and, clearly, goods can be as easily transported into unfortified places as into fortified ones.

At the present day, the term Blockade is commonly restricted to the closing of a port by a force of ships of war, and blockades

---

(a) 10 Moore, P.C. 36.

by sea and land are now comparatively rare, the blockade of Genoa in the year 1800 having been the last of that description on a great scale. Besides neutrals, in the very nature of things, can have but little to do with blockades by land.

A difference exists between a Siege and a Blockade which is often of importance. A siege is undertaken with the view of capturing the place besieged, while the object of a blockade is to cripple the commerce of the enemy by preventing neutrals from trading with him. But, as a matter of fact, all besieged places may be said to be both besieged and blockaded at the same time.

The declaration of a blockade is an act of sovereign power which, as it presses very severely upon neutral nations, should not be intensified by careless administration. But the declaration of a blockade is not one of the sovereign acts which cannot be delegated. And so a naval officer, acting in a distant part of the world, may proclaim a blockade, for he must possess power to act as well against the commerce of the enemy as against his naval and military forces. Phillimore holds that, "if a commander so circumstanced did not originally possess this authority and it should appear that he had acted irregularly, and without orders, this is an affair between him and his government, and the blockade would hardly be impeachable by the Neutral on that ground; certainly not if that government, by its subsequent conduct, had adopted his act; this would be on the principle *ratihabitio mandato æquiparatur* retrospectively legitimate what had been done by their officer." (a)

This is undoubtedly the standard doctrine, and yet in these days of telegraphs it is difficult to imagine a naval officer so situated that he is compelled to declare a blockade without consulting his government. And even in the pre-telegraph days the courts refused to recognize such actions within the limits of Europe. Thus in the leading case of *The Rolla*, Lord Stowell laid down that the power of a naval commander is limited in

(a) Op. cit. CCL XXXVIII.

Europe, "where government is almost at hand to superintend the course of operations; and that a commander going out to a distant station may reasonably be supposed to carry with him such a portion of the sovereign authority delegated to him as may be necessary to provide for the exigencies of the service on which he is employed." (6 Robinson, 367.)

If a naval officer enforces a blockade illegally, through ignorance occasioned by the neglect of his government, then he must be indemnified by his government. In the case of *The Mentor* Lord Stowell said:—"If an act of mischief is done by the King's officers in a place where no act of hostility ought to have been exercised, it does not necessarily follow that mere ignorance of that fact would protect the officers from civil responsibility. If by articles, a place or district was put under the Queen's peace, and an act of hostility was afterwards committed therein, the injured party might have a right to resort to a court of prize for compensation; and if the officer acted through ignorance, his own government must protect him; for it is the duty of government, if they put a certain district within the King's peace, to take care that due notice shall be given to those persons by whose conduct that peace is to be maintained; and if no such notice has been given, nor due diligence used to give it, and a breach of the peace is committed through the ignorance of those persons, they are to be borne harmless at the expense of that government, whose duty it was to have given that notice." (1 Robinson, 183.

A neutral must have some means of obtaining notice of the changed condition of affairs introduced by a blockade, and, therefore, the party charged with violating a blockade must be proved to be aware of its existence.

The almost universal practice is for a formal notification to be made by the blockading power to all neutral powers. "To make a notification effectual and valid," said Lord Stowell, in *The Rolla*, "all that is necessary is that it shall be communicated in a credible manner; hence, though one mode may be

more formal than another, yet any communication which brings it to the knowledge of the party, in a way which could leave no doubt in his mind as to the authenticity of the information, would be that which ought to govern his conduct, and will be binding upon him. It is at all times most convenient that the blockade should be declared in a public and distinct manner, instead of being left to creep out from the consequences produced by it." (6 Robinson, 367.)

Then, after giving such notice, the responsibility of making the blockade known to its subjects rests with each of the powers notified. Lord Stowell, in his famous judgment in case of *The Neptunus*, said:—"The effect of a notification to any foreign government would clearly be to include all the individuals of that nation; it would be nugatory if individuals were allowed to plead their ignorance of it; it is the duty of foreign governments to communicate the information to their subjects, whose interests they are bound to protect. I shall hold, therefore, that a neutral master can never be heard to aver against a notification of blockade that he was ignorant of it. If he is really ignorant of it, it may be subject of representation to his own government, and may raise a claim of compensation from them, but it cannot be a plea in the court of a belligerent. In the case of a blockade *de facto* only, it may be otherwise; but this is a case of blockade by notification. Another distinction between a notified blockade and a blockade existing *de facto* only, is, that in the former the act of sailing for a blockaded place is sufficient to constitute the offence. It is to be presumed that the notification will be formally revoked, and that due notice will be given of it; till that is done, the port is to be considered as closed, and from the moment of quitting port to sail to such a destination, the offence of violating the blockade is complete, and the property engaged in it subject to confiscation. It may be different in a blockade existing *de facto* only; there no presumption arises as to the continuance, and the ignorance of the party may be admitted as an excuse for sailing on a doubtful and provisional destination." (2 Robinson, 113.)

Wheaton holds, however, that "as a proclamation, or general public notification, is not of itself sufficient to constitute a legal blockade, so neither can a knowledge of the existence of such a blockade be imputed to the party, *merely* in consequence of such a proclamation or notification," and that distinguished publicist goes on to say that, "not merely must an actual blockade exist, but a knowledge of it must be brought home to the party in order to show that it has been violated." (a)

In giving judgment in the case of *The Henrick and Maria*, Lord Stowell observed:—"It is certainly necessary that a blockade should be intimated to neutral merchants in some way or other. It may be notified in a public and solemn manner by declaration to foreign governments; and this mode would always be most desirable, although it is sometimes omitted in practice; but it may commence also *de facto*, by a blockading force giving notice on the spot to those who come from a distance, and who may, therefore, be ignorant of the fact. *Vessels going in* are in that case entitled to a notice before they can be justly liable to the consequences of breaking a blockade; but I take it to be quite otherwise with *vessels coming out* of the port which is the object of blockade. There no notice is necessary after the blockade has existed *de facto* for any length of time; the continued fact is itself a sufficient notice. It is impossible for those within to be ignorant of the forcible suspension of their commerce; the notoriety of the thing supersedes the necessity of particular notice to each ship. The sight of one vessel would not certainly be sufficient notice of a blockade." (1 Robinson, 147.)

But a blockade may exist without a public declaration. The fact duly notified to an individual on the spot is of itself sufficient; for public notifications between governments can be meant only for the information of individuals; but if the individual is personally informed that purpose is still better obtained than by a public declaration. (Lord Stowell, *The Mercurius*, 1 Robinson, 82.)

(a) Wheaton's Elements of International Law, Eng. Edit §514.

In accordance with this ruling the prize courts of Great Britain and of the United States agree in holding that notice to the government is equivalent to notice to all its subjects. There is not, however, anything like uniformity in this important matter of notice, and the only uniform practice among nations is that when a blockade has become quite notorious, every neutral vessel attempting to enter the blockaded port shall be presumed to know of the existence of the blockade. Thus during the late Civil War in the United States the blockade of Charleston was so notorious that a neutral vessel attempting to run the blockade would have been seized, even though its government had not been notified of the blockade.

Lord Stowell in giving judgment in case of *The Adelaide* remarked :—"Suppose a notification to be made to Sweden and Denmark it would become the general topic of conversation, and it would be scarcely possible that it should not travel to the ears of a Bremen man, and though it might not be so early known to him as to the subjects of the states to which it was immediately addressed, yet in process of time it must reach him, and must be supposed to impose the same observance of it upon him ; it would strongly affect him with the knowledge of the fact that the blockade was *de facto* existing. Therefore, though a notification does not *proprio vigore* bind any country but that to which it is addressed, yet, in reasonable time, it must affect neighbouring states with knowledge, as a reasonable ground of evidence. It is not to be said by any person 'although I know that a blockade exists, yet, because it has not been notified to my court, I will carry out a cargo.' It would be a very fraudulent omission to take no notice of what is a subject of general notoriety in the place." (2 Robinson, 111.)

Due and sufficient time for the notification of a blockade must be allowed according to circumstances. The time so allowed has been lessened by telegraphs, steamships and railways, and the only decisions on the point were given long before these mighty agents were dreamt of. In the year 1799 Lord Stowell restored a Danish ship—*The Jonge Petronella*—which had

been captured off the coast of Holland on March 28th, on the ground that the blockade had only been notified to foreign ministers on March 21st, and that he did not think a week sufficient time to affect the parties with a legal knowledge of the blockade. (2 Robinson, 131.)

And in case of *The Calypso* the same learned judge condemned the vessel, on the ground that she had taken in cargo at Rotterdam, then blockaded, on April 20th when, intelligence of the blockade having been actually known to the Prussian consul at Amsterdam on the 12th, there was time for constructive notice at Rotterdam by the 15th. (2 Robinson, 298.)

The French publicists hold that there must be both a notification from the belligerent power and also a warning from the blockading cruisers to each vessel attempting to enter the blockaded port. But the French agree with all other writers in considering notoriety equivalent to notification, and in not giving warning to each vessel after the blockade is notorious.

The American practice is well shown by the reply of the Hon. Wm. H. Seward, Secretary of State (1861), to the British Ambassador, Lord Lyons, who had inquired whether it was intended to issue notice for each port, as soon as the actual blockade of it should commence. The reply was "that the practice of the United States was not to issue such notices, but to notify the blockade individually to each vessel approaching the blockaded port, and to inscribe a memorandum of the notice having been given in the ship's papers. No vessel is liable to seizure which had not been individually warned. The plan had, I was assured, been found to be in practice the most convenient and the fairest for all parties. The fact of there being blockading ships present to give the warning was the best notice and best proof that the port was actually and effectually blockaded."

The British authorities hold to two kinds of blockade, the first a blockade *de facto*, the essential element of which is the actual presence of an efficient force in front of the blockaded port, and in this kind of blockade no vessel is held guilty unless

it has been warned off. The second kind of blockade is by notification to neutral powers, accompanied of course by the fact. Phillimore remarks that in "the former case, when the fact ceases (otherwise, indeed, than by an accident or the shifting of the wind) there is immediately an end of the blockade; but where the fact is accompanied by a public notification from the government of a belligerent country to neutral governments, *primâ facie*, the blockade must be supposed to exist till it has been publicly repealed." (a)

Notification of blockade should always be made to the subjects of the state imposing that blockade, and also to all cruisers of the blockading power.

Again, the declaration of blockade must not only be legal and regular, but it must be specific as well. In the well-known case of *The Henrick and Maria*, Lord Stowell decided that a notification of a general blockade of the coast of Holland, which was untrue in fact, was not available, by limitation as construction, for a blockade of Amsterdam only, though really existing. In that case the captor had warned the master "not to proceed to any Dutch port," and upon his saying that he must proceed according to his bill of lading (Amsterdam) had arrested his ship. "This notice," said Lord Stowell, "is, I think, in point of authority, illegal; at the time when it was given there was no blockade which extended to all Dutch ports. A declaration of blockade is a high act of sovereignty, and a commander of a King's ship is not to extend it. The notice is also, I think, as illegal in effect as in authority; it cannot be said that such notice, though bad for other ports, is good for Amsterdam. It takes from the neutral all power of election, as to what other port of Holland he should go to, when he found the port of his destination under blockade. A commander of a ship must not reduce a neutral to this kind of distress; and I am of opinion that if the neutral had contravened the notice, he would not have been subject to condemnation." (1 Robinson, 148.)

(a) Op., cit., CCXC.

Many treaties require warning to the offending vessel as well as notification to neutral governments. Thus in the Treaty of 1794 between Great Britain and the United States it was provided that "whereas vessels frequently sail for a port or place belonging to an enemy, without knowing that the same is either besieged, blockaded or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place; but she shall not be detained, nor her cargo, if not contraband, be confiscated, unless after notice, she shall again attempt to enter."

Under this treaty, the mere fact of clearing out for a blockaded port would not suffice for the condemnation of a vessel, unless the officers of the vessel had been warned off by the blockading squadron.

But, according to Lord Stowell, previous warning under treaties *is not* in all cases indispensable. Thus in the case of *The Columbia*, an American vessel, captured by British cruisers, he, in condemning both ship and cargo, observed:—"It has been argued that, by the American treaty, there must be a previous warning; certainly where vessels sail without a knowledge of the blockade a notice is necessary; but if you can affect them with a knowledge of that fact, a warning then becomes an idle ceremony of no use, and, therefore, not to be required. (1 Robinson, 156.)

Even the misinformation, or want of information, of foreign authorities as to the alleged raising of a blockade, will not be received as an excuse. Thus in the case of *The Spes and Irene* (1803), it was argued that the masters of these vessels had been informed by the Consul of Hamburg at Archangel that he conjectured that the blockade of the Elbe had been raised. Lord Stowell rejected this plea, observing:—"It had been said that no intelligence of the blockade had been received from the Consul of the State of Hamburg; though I must presume it had, because, as the notification was made to the Consul (of Hamburg) here in London, it was his duty to make the communication to the consuls of his government in foreign ports; and as the in-

formation had arrived at Hamburg, and had been actually communicated from thence to Archangel by private channels, the same communication must be supposed to have been made from public authority to the public minister; or if not, if there had been any neglect, the consequence must be imputed only to the state and its officers, who are answerable to their subjects for the consequences of their neglect. If the information of foreign ministers could be deemed sufficient to exempt a party from all penalty, there would be no end of such excuses. Courts of justice are compelled, I think, to hold as a principle of necessary caution that the misinformation of a foreign minister cannot be received as a justification for sailing in actual breach of an existing blockade." (5 Robinson, 79.)

Intoxication on the part of the master will not be received in excuse of breach of blockade. In condemning *The Shepherdess*, which had again and again broken the blockade of Havre, Lord Stowell remarked: "If such an excuse could be admitted there would be eternal carousings in every instance of violation of blockade. The master cannot, on any principle of law, be permitted to stultify himself by the pretended or even real use of intoxicating liquors of which, even if it were a thing to be examined, the court could in no instance ascertain the truth of the fact. The owners of the vessel have appointed him their agent, and they must in law be bound by his imprudence as well as by his fraud." (5 Robinson, 262.) In the same judgment the same high authority held that where a master, in a state of intoxication, persists in a course involving a breach of blockade, it is the duty of the supercargo, and of the officers concerned in the navigation of the ship, to dispossess him of the command, and to give a proper direction to the voyage.

Want of water and provisions as an excuse for breach of blockade has always been most reluctantly accepted by British prize courts, which, in this respect, differ greatly from all other courts of justice.

Thus Lord Stowell, speaking on this subject in case of *The Fortuna*, maintained that "want of provisions is an excuse which

will not on light grounds be received, because an excuse, to be admissible, must show an imperative and overruling compulsion to enter the particular port under blockade, which can scarcely be said in any case of mere want of provisions. It may induce the master to seek a neighbouring port; but it can hardly ever force a person to resort exclusively to the blockaded port." (5 Robinson, 27.)

And again in *The Hurtige Hane* the same authority said :— "It is usual to set up the want of water and provisions as an excuse; and if I was to admit pretences of this sort, a blockade would be nothing more than an idle ceremony. Such pretences are, in the first instance, extremely discredited on two grounds, —that the fact is strongly against them, and that the explanation is always dubious, and liable to the imputation of coming from an interested quarter. Nothing but an absolute and unavoidable necessity will justify the attempt to enter a blockaded port; considerations of an inferior nature, such as the avoiding higher fees or slight difficulties, will not be suffered. Nothing less than an unavoidable necessity, which admits of no compromise and cannot be resisted, can justify the offence." (2 Robinson, 124.)

Finally, in the case of *The Exchange*, Lord Stowell summed up his views in the following words:—"It is impossible to relax that principle; if it were once admitted that a ship can enter an interdicted port to supply herself with water, or on any other pretence, a door would be open to all sorts of frauds, without the possibility of preventing them." (Edwards, 42, 43.)

The American view of this subject, as enunciated by Wheaton, is entirely different: "The stringency of the rule prohibiting vessels from entering a blockaded port is only relaxed when the ship attempting to enter does so from reasons of necessity. She may be out of provisions or water, or she may be in a leaking condition, and no other port be of easy access." (a)

The statement that the alleged blockade-runner had ap-

(a) Op. cit., § 519 b.

proached the blockaded port for the purpose of ascertaining the land will, as might be expected, be received with the utmost caution as an excuse for breach of blockade. Thus *The Adonis* having attempted to enter Havre, at that time under strict blockade, was seized by one of the vessels of the blockading squadron, when the master asserted that he stood in to ascertain *whether or not the coast was French*, the mate having maintained that it was not! It was proved, however, that *The Adonis* had been warned off by another British vessel, and the master admitted that the alleged argument had been held before that vessel spoke him; so Lord Stowell, as a matter of course, condemned the vessel on the ground that the doubts of the officers as to the coast might have been removed by inquiring of that first British vessel. He condemned the cargo on the same grounds, holding further that the deviation to Havre from the alleged destination to Nantes was entirely for the service of the owner of the cargo. (5 Robinson, 256)

Neutral vessels may retire from a blockaded port, taking with them the cargoes already shipped, but no goods may be taken on board after a notification of blockade, or, in the case of a blockade by the simple fact only, after the actual commencement of the blockade. In the leading case of *The Betsey*, Lord Stowell remarked that, "although it might be hard to refuse a neutral liberty to retire with a cargo already laden, and by that act already become neutral property, yet, after the commencement of a blockade, a neutral cannot be allowed to interfere in any way to assist the exportation of the property of the enemy." (1 Robinson, 92.) From the case of *The Rolla*, it appears that the court will hold every cargo to be a fresh purchase which is not delivered, previously to the notification, either on board the neutral vessel itself *or in lighters* alongside that vessel. (6 Robinson, 367.) But goods *in a warehouse* cannot be shipped.

This doctrine is now received in some quarters with a certain amount of doubt, especially by some excellent American publicists. Thus Mr. Marcy, Secretary of State, writing (April 13, 1854) to Mr. Buchanan, remarks:—"In some respects I think

the law of blockade is unreasonably rigorous towards neutrals, and they can fairly claim relaxation of it. By the decisions of the English Courts of Admiralty,—and ours have generally followed in their footsteps,—a neutral vessel which happens to be in a blockaded port is not permitted to depart with a cargo, unless that cargo was on board at the time when the blockade was commenced, or was first made known. Having visited the port in the common freedom of trade, a neutral vessel might be permitted to depart with a cargo, without regard to the time when it was received on board."

This liberal and equitable doctrine was acted upon at the commencement of the late Civil War, and on May 11, 1861, Lord Lyons, with the assent of Mr. Seward, Secretary of State, notified the British consuls that "neutral vessels will be allowed fifteen days to leave port after the actual commencement of the blockade, whether such vessels are with or without cargoes, and whether the cargoes were shipped before or after the commencement of the blockade."

But later in the same year (Oct. 16, 1861) Mr. Seward informed Lord Lyons that "the Judge of the Court of the United States for the Southern District of New York having recently decided, after elaborate argument of counsel, that the law of blockade does not permit a vessel, in a blockaded port, to take on board cargo after the commencement of the blockade; with a view to avoid any future misunderstanding upon this subject, you are informed that the law, as thus interpreted by the judge, will be expected to be strictly observed by all vessels in ports of insurgent states during their blockade by the naval forces of the United States."

Lord Stowell, in case of *The Welvaart Van Pillau*, laid it down as a principle that "a neutral vessel is not at liberty to come out of a blockaded port with a cargo." He added, that "there is no natural termination of the offence but the end of the voyage." (2 Robinson, 130.)

A vessel may be sold by one neutral merchant to another neutral merchant in a blockaded port, and sail out in ballast

without violating the blockade, but the vessel would be liable to capture and forfeiture if the first owner, or the purchaser, had been of the hostile nation.

But Lord Stowell decided in case of *The General Hamilton* that where a vessel had been purchased in a blockaded port, that alone is the illegal act, and it is immaterial out of what funds the purchase is made. And he added that she cannot be said to be taken *in delicto*, when on her voyage to the country of the purchaser she has been driven into an intermediate port by stress of weather. (6 Robinson, 61.

In case of *The Potsdam* Lord Stowell decided that where a neutral has sent in goods before the blockade, which are found unsaleable, or are otherwise withdrawn *bonâ fide* by the owner, they are not subject to condemnation for coming out. (4 Robinson, 89.) So goods sent by neutral merchants, say into Charleston, South Carolina, before the blockade of that port by the United States squadron, and found to be unsaleable in the then existing state of affairs, would be allowed to be re-shipped by the same neutral vessel, and this on the ground that just as a neutral may withdraw his vessel from a blockaded port so may he withdraw goods sent in before the blockade commenced. But the *onus probandi* in such cases rests with the neutral owner or his agents, and good faith would require to be very evident indeed.

In the case of *The Byfield* it was held that the compulsory sale of cargo in the blockaded port is no excuse for breach of blockade after having gone in voluntarily. (Edwards, 188.)

And a neutral ship, sailing out of a blockaded port, in consequence of a mere rumour that hostilities were likely to take place between the enemy and his own country, would not be liable to condemnation, though laden with a cargo, where the regulations of the enemy would not permit a departure in ballast. (*The Drie Vrienden.* 1 Dodson, 259.)

Positive though erroneous information from a man-of-war belonging to the blockading power, that a particular port is not blockaded, will be received in favour of a neutral vessel acting

upon such information. Thus in case of *The Neptunus*, Lord Stowell released the prize on evidence that the captain of a British frigate had informed the master at sea, that Havre, the port to which he was bound, was not blockaded, and that he might proceed to his destination. "I do not mean," said the learned judge, "that the fleet could give the master any authority to go to a blockaded port; it is not set up as an authority, but as intelligence affording a reasonable ground of belief, as it could not be supposed that such a fleet as that was would be ignorant of the fact." (2 Robinson, 110.)

A blockade must be *absolute*, that is, all commerce with the blockaded port must be forbidden, and all intercourse with it cut off. Thus Grotius holds that it is unlawful to carry anything to blockaded places, "if it might impede the execution of the belligerents' lawful designs, and if the carriers might have known of the siege or blockade, as in the case of a town actually invested or a port closely blockaded." As Sir William Scott, afterwards Lord Stowell, remarked in his judgment in case of *The Vrow Judith* (Jan. 17, 1799):—"A blockade is a sort of circumvallation round a place, by which all foreign connection and correspondence is, as far as human power can effect it, to be entirely cut off." (1 Robinson, 151.)

An effective blockade, then, is one supported by sufficient force; but it is evident that it is often exceedingly difficult to determine what is a force sufficient really to prevent access to the coasts of an enemy.

"The very notion of a complete blockade," said Lord Stowell in *The Stert*, "includes that the besieging force can apply its power to every point of the blockading state. If it cannot, it is no blockade, at that quarter where its power cannot be brought to bear; and where such a partial blockade is undertaken, it must be presumed that this is no more than what was foreseen by the blockading state, which, nevertheless, thought proper to impose it to the extent to which it was practicable." (4 Robinson, 66.)

Sir Charles Napier's dictum on this subject is, "*Double or*

treble our navy would not be sufficient to blockade the ports of France." It is hardly possible for a blockade to render all access to a port entirely out of the question, but any reasonable chance of entering it must be precluded; and, in the words of Lord Ellenborough, access must be prevented, "by establishing such a case of danger to those who attempt to violate the blockade as to induce them to desist from attempting to do so."

"In the eye of the law," said Lord Chief Justice Cockburn, "a blockade is effective if the enemy's ships are in such numbers and positions as to render running the blockade a matter of danger, although some vessels may succeed in getting through. (a)

A declaration of blockade must be accompanied by actual investment in order to be valid. Upon the arrival of the British fleet in the West Indies, a proclamation was issued (Jan. 1, 1794) by Admiral Jervis, inviting the inhabitants of Martinique, Ste. Lucie and Gaudaloupe, all French islands, to put themselves under the protection of the British; and, on their refusal, hostile operations were commenced against the various islands, but separately, and in succession, Gandaloupe being taken April 13, 1794. Among the prizes taken was an American vessel, named *The Betsey*. A question arising as to the legality of the capture, the captors justified the seizure by a statement, "that in January, 1794, Gaudaloupe was summoned, and was then put into a state of complete investment and blockade." Lord Stowell said, "the word complete is a word of great energy, and we might expect from it to find that a number of vessels were stationed round the entrance of the port to cut off all communication; from the protest I perceive that the captors entertained but a very loose notion of the true nature of a blockade, for it is there stated, 'that on the 1st January, after a general proclamation to the French islands, they were put into a state of complete blockade.' It is a term, therefore, which was applied to all those islands at the same time under the first

(a) *Giepel v. Smith*, L. R. 7, Q. B. 410.

proclamation. The Lords of Appeal have determined that such a proclamation was not in itself sufficient to constitute a legal blockade. I cannot, therefore, lay it down that a blockade did exist, till the operations of the forces were actually directed against Gaudaloupe in April. It must, however, be allowed on the other side that the island of Gaudaloupe was at that time in a situation extremely ambiguous and critical. It could be no secret in America that the British forces were advancing against this island, and that the planters would be eager to avail themselves of the interference of neutral persons to screen and carry off their property under such a posture of affairs; therefore, ships found in the harbours of Gaudaloupe must have fallen under very strong suspicions, and have become justly liable to very close examinations. The suspicions besides would be still further aggravated if it appeared, as in this case, that those for whom the ships were claimed kept agents stationed on the island, and might, therefore, be supposed to be connected in character and interests with the commerce of the place. It is true, indeed, the Lords of Appeal have since pronounced the island to have been not under blockade; but it was a decision that depended upon a greater nicety of legal discrimination than could be required of military persons engaged in the command of an arduous enterprise." (1 Robinson, 93.)

Casimér Perier, a distinguished French publicist, argues that "the validity of a blockade should depend on a simultaneous attack by land, that a port should not be considered as blockaded unless invested also on the land side. Otherwise, while the general commerce of neutrals is interdicted, and they are subjected to the greatest sacrifices, a neighbouring state may supply, through rivers, canals or railroads, with the products of its soil and industry, a city open on all sides, and whose port alone is blockaded." (a)

In some cases special treaties have determined the precise amount of force requisite to constitute a valid blockade. Thus, in

(a) Revue des Deux Mondes, 1862, p. 434.

the year 1742, a treaty was concluded between France and Denmark, declaring that the mouth of a blockaded port must be closed by not less than two vessels, or by a battery of cannon placed on the coast in such position that vessels cannot enter without evident danger. Again, in 1753, a treaty between Holland and Naples required the presence of a squadron of at least six vessels, at a distance of a little more than cannon-shot from the blockaded port, or the existence of batteries so placed that entrance could not be effected without passing under the fire of the cannon.

A blockade may be maintained against the ports of an enemy but not against neutral ports, even when the leaving of these neutral ports open would be almost certain to result in the nullification of the blockade. Thus during the late Civil War, the United States government declared a blockade of all the Southern ports from the Chesapeake to the Rio Grande, and accordingly a squadron was stationed off the mouth of the latter river in order to cut off trade with Texas. On the question being raised the Supreme Court of the United States decided that the blockade did not apply to the western bank of the Rio Grande, which is Mexican territory, and this although it was well-known that arms and munitions of war were constantly being smuggled across the river into Texas.

The cruisers of a blockading squadron may be blown off the invested port by a storm without vitiating the blockade in any way. Such an accident, in the words of Phillimore, "does not *suspend*, much less *break*, the blockade." Thus, during the blockade of Toulon in the year 1793, the vessels employed on that service were driven *close to the African coast*, and yet it was held that the blockade was continuous and continued.

The vessels of a blockading squadron are not permitted to leave their posts and pursue a would-be blockade-runner to a distance, for that would amount to a desertion of the duty imposed on them; but they may take a prize if it comes in their way. (*La Melanie*, 2 Dodson, 130.) Nevertheless, it was decided in the case of *The Eagle* that chasing suspicious vessels in

the neighbourhood of a blockaded port by the blockading cruisers does not work a cessation of the blockade. (1 Acton, 65.)

In the case of *The Nancy* Sir William Grant (1804) decided that "the question as to the adequacy of the force to maintain the blockade is always, to a certain degree, one of fact and evidence; but the opinion, as to this point, of the commander on the particular station, must always have great and, perhaps, predominant weight with the court; and against that opinion in favour of the adequacy of the force, the fact that some part of it was employed in chasing vessels will have no effect." (1 Acton, 64, 65.)

During the Mexican War, Mr. Mason, Secretary of the Navy, instructed the flag-officer in command as follows:—"You should give public notice that, under Commodore Stockton's general notification, no port on the west coast of Mexico is regarded as blockaded, unless there is a sufficient American force to maintain it, actually present, or, temporarily driven from such actual presence by stress of weather, intending to return."

But the case is different when the blockading squadron is driven off by a hostile force; here the blockade can only be reconstituted by the same formalities as at first; and each vessel attempting to violate the reconstituted blockade should be warned off. Phillimore remarks that, "the neutral is not bound to foresee or to conjecture that this blockade will be resumed; and, therefore, if it is to be renewed, it must proceed *de novo* by the usual course, and without reference to the former state of facts by which it has been so effectually interrupted; and the presumption, if the fact be dubioüs, as to the resumption of such blockade, is in favour of the neutral (a)." (*The Hoffnung*, 6 Robinson, 116, 117).

Again, a blockade must be *continuous*, not *intermittent*. It will not do to commence a blockade with a strong squadron, and shortly replace it by a single frigate. The law on this subject is well exhibited in Sir William Grant's judgment in the leading case of *The Nancy*, seized for breach of the blockade of Martini-

(a) Op. cit., CCXCIV.

que in the year 1804. Sir William said:—"That to constitute a blockade, the intention to shut up the port should not only generally be made known to vessels navigating the seas in the vicinity, but that it was the duty of the blockaders to maintain such a force as would be of itself sufficient to enforce the blockade. This could only be effected by keeping a number of vessels on the different stations, so communicating with each other as to be able to intercept all vessels attempting to enter the ports of the island. In the present instance, no such measures had been resorted to, and this neglect necessarily led neutral vessels to believe these ports might be entered without incurring any risk. The periodical appearance of a vessel of war in the offing, could not be supposed a continuance of a blockade, which the correspondence mentioned had described to have been previously maintained by a number of vessels, and with such unparalleled rigour, that no vessel whatever had been able to enter the island during its continuance. Their Lordships were, therefore, pleased to order that the ship should be restored, the proof of property being sufficient, but directed further proof as to the cargo claimed by the American citizens mentioned." (1 Acton, 58.)

A blockade, then, is vitiated, *ab initio*, by the absence of a sufficient blockading force. So Bynkershoek, commenting on the Decree of the States-General of June 26, 1630, declaring the ports of Flanders in a state of blockade, remarks that the blockade was vitiated, because not supported by a sufficient naval force, and he considers that vessels captured by the Dutch cruisers ought to be restored to their owners. Again, a blockade is, or ought to be, a uniform exclusion of all vessels, for if some are permitted to enter while others are kept out, most certainly such irregularity would vitiate the blockade, even though it had been regularly proclaimed. True, Phillimore remarks that "particular licenses granted to individuals do not vitiate a blockade;" (a) and this statement is founded on judgments in

(a) Op. cit., CCLXXXVII.

case of *The Fox* (1 Edwards, 320) and others, but most certainly this doctrine would be challenged at the present day.

French and British writers on International Law are at variance on the important subject of occasional absences of the blockading squadron. Following Lord Stowell, most British writers hold that after a blockade is proclaimed, it is not vitiated by a temporary absence of the blockading squadron, and that great authority even went so far as to contend that a blockade which had *not* been proclaimed would not be vitiated by such absence, provided that the blockade was notorious. On the other hand, the French writers, especially Ortolan and Hautefeuille, contend that a blockade, even when regularly proclaimed, is vitiated by a temporary departure of the blockading squadron, and that a blockade is legitimate simply because the part of the sea occupied by the blockading squadron has been, as it were, conquered by it. At the present day, it would probably be decided that temporary absence would vitiate a blockade, unless indeed the absence was caused by a storm.

When a port or coast has been blockaded, notice should always be given by the blockading power when the blockade is raised. Such a course is conducive to amity and good-will, and yet if the belligerent power neglects to issue such a notice, there is no way of punishing him for the neglect. Woolsey holds that "common fame in regard to the breaking up of a blockade will justify a neutral in sailing for the blockaded, port" (a), though the same excellent writer considers that "general notoriety, as by news travelling from one country to another, is not sufficient notice" (a) of the blockade of a place.

When a blockade has once been raised it can only be resumed by *notification*. Precisely the same measures are requisite to recommence the blockade as were required for its original imposition, and the mere re-appearance of the blockading cruisers will not suffice. It follows that the mere sailing for that port with the intention of entering it would not be looked upon

(a) Woolsey's Introduction to the Study of International Law, §187.

as an unlawful act. The writer inclines to believe, however, that after a blockade has been discontinued, it would be looked upon as resumed if a strong squadron returned and gave warning to each vessel attempting to enter. Suppose, for example, that a Confederate squadron had raised the blockade of Mobile, which, however, was promptly re-blockaded by a United States squadron of superior force; but, in the meantime, neutral vessels hearing of the raising of the blockade, sail for Mobile, and on approaching the port receive warning from the blockading cruisers, then surely they would not be justified in continuing the attempt.

According to the British doctrine, as formulated by Lord Stowell and accepted by the United States prize courts, the mere act of sailing for a blockaded port, *knowing it to be blockaded*, is itself an attempt to break that blockade, and this too without any reference to the extent of the voyage performed when the vessel was seized. (*The Columbia*, 1 Robinson, 156.)

Phillimore lays down that "to sail with the intention of evading a blockade is, according to the Prize Law laid down by the English Courts, a beginning to execute that intention and an overt act constituting the offence. From that moment the blockade is fraudulently invaded" (a)

Chief Justice Marshall, of the Supreme Court of the United States, in giving judgment in the leading case of *The Nereide*, says: "The offence, although at the moment of capture, the vessel be, by stress of weather, driven in a direction from the port, for the hostile intention still remains unchanged." And he further adds:—"Sailing from Tobago to Curraçoa, knowing Curraçoa to be blockaded, would have incurred this risk; but sailing for that port without such knowledge did not incur it." (5 Cranch, 343.)

This view, which was undoubtedly held by all British authorities during the Napoleonic wars, was somewhat modified by the fact then, even in Lord Stowell's time, the vessel was not

(a) Op. cit., CCXVIII.

liable to capture if clear evidence was forthcoming from the captured vessel that the intention had been abandoned, or that its execution was contingent on the blockade being raised. And even Phillimore, a staunch supporter of the older doctrine, states that "the mere sailing to a port which is blockaded, without an intention of breaking the blockade, is not an offence against International Law, although the blockade should be in force when the ship arrives at the port." (a)

The proof of the intention to violate the blockade would be found in the bills of lading and in the papers on board, and possibly the statements of owners or masters would be held to be sufficient evidence. Alterations in the ship's log or in its papers would be extremely suspicious, as affording presumptive evidence of fraud. It was even held that a change of course in order to avoid a man-of-war was good ground for suspicion, but that was in Lord Stowell's time, and would not now be regarded as a good precedent.

But it must be carefully noted that the mere mental design, unaccompanied by words, or documents, or actions, *cannot be proved*, for clearly the mental design must be conjoined to some overt act to show the intention. And the writer is of opinion that if a neutral vessel sails with the fixed determination of violating a blockade, and the master changes his mind and sails for a neutral port, deflecting from his intended course in order to do so, that no prize court of the present day would condemn the vessel in the event of capture. But the proof of altered destination would require to be very clear indeed, and the proof would often be impossible.

A concealed illegal destination is presumptive evidence of an intention to break the blockade, but much would depend upon the position of the vessel with reference to the alleged destination.

A blockade is not violated by the mere act of an owner sending his vessel to a blockaded port, he being ignorant of that

(a) Op. CCCX.

fact, and the master having in good faith changed his course for a neutral port before the capture.

Thus in case of *The Imina*, which had sailed from Dantzic for Amsterdam, but having learned at Elsinore of the blockade of Amsterdam, had shaped her course for Embden and was captured on its voyage thither, Lord Stowell restored the vessel on the following grounds:—"That it was not taken *in delicto* in the prosecution of landing its cargo at a hostile port. It is said, that on the understanding and intention of the owner it was going to a hostile port, and that the intention on his part was complete from the moment when the ship sailed on that destination; had it been taken at any period previous to the actual variation there could be no question but that this intention would have been sufficient to subject the property to confiscation; but when the variation had actually taken place, however arising, the fact no longer existed. There was no *corpus delicti* existing at the time of the capture. In this point of view, I think the case is very distinguishable from some other cases, in which, on the subject of deviation by the master into a blockaded port, the court did not hold the cargo to be necessarily involved in the consequences of that act." (3 Robinson, 169.)

No neutral vessel may enter a blockaded port, even for the purpose of removing neutral goods placed there before the blockade commenced. If such a vessel enters a blockaded port the presumption is that she enters for the purpose of delivering cargo. Even if she comes out again with the cargo still on board, it is held that this presumption is not defeated, for some unforseen circumstance may have induced her master to change his mind. (*The Charlotta*, 1 Edwards, 252.)

When a port is subjected to a blockade *de facto*, a neutral vessel may approach a blockading cruiser for the purpose of making inquiries, but not when the blockade is by *notification*. "The merchant," said Lord Stowell in the leading case of *The Spes and Irene*," is not to send his vessel to the mouth of the river and say 'if you don't meet with the blockading force enter; if you do, ask a warning, and proceed elsewhere.' Who does

not at once perceive the frauds to which such a rule would be introductory? The true rule is, that, after the knowledge of an existing blockade, you are not to go to the very station of blockade under pretence of inquiry." (5 Robinson, 76.)

And in case of *The Betsey*, the same eminent authority said: "Ships sailing from neutral ports for ports under blockade must call somewhere to obtain information, for the court will not allow the information to be obtained at the mouth of the blockaded port. The distance of the port of departure is a circumstance to be favourably considered by the court, although not to be held a ground of absolute exemption from the common effect of a notification of a blockade; being at a distance where they cannot have constant information of the state of blockade, whether it is continued or is relaxed, it is not unnatural that they should send their ships conjecturally, upon the expectation of finding the blockade broken up, after it had existed for a considerable time; but the inquiry whether the blockade has so broken up, must be made by such ships at ports that lie in the way, and which can furnish information without furnishing opportunities of fraud, and not at the spot blockaded or from the blockading vessels." (1 Robinson, 334.)

Phillimore sums up by stating that inquiries must be made "*in a safe and permitted place, and in a safe and permitted manner.*" (a).

And a neutral vessel may not approach so near the blockaded port that she may enter when she pleases; if she does so the presumption is that she intends to run the blockade. "If a vessel could, under pretence of proceeding further, approach close to the blockaded port, so as to be in a condition to slip in without obstruction, then," said Lord Stowell in *The Neutralität*, "it would be impossible that any blockade could be maintained. It would, I think, be no unfair rule of evidence to hold, as a presumption *de jure*, that she goes there with an intention of breaking the blockade; and if such an inference may possibly

(a) Op. cit., CCCIV.

operate with severity in particular cases where the parties are innocent in their intentions, it is a severity necessarily connected with the rules of evidence, and essential to the effectual exercise of this right of war." (6 Robinson, 30.) Still less is a neutral vessel permitted to place herself in such a situation as to be within the protection of the batteries on shore. (*The Charlotte Christine*, 6 Robinson, 101; *Gute Erwartung*, 6 Robinson, 182.) Even a vessel in need of a pilot is not permitted to approach a blockaded port.

A blockade is broken as completely *by coming out as by going in.* "A blockade," said Lord Stowell, in *The Vrow Judith*, "is a sort of circumvallation round a place, by which all foreign connection and correspondence is, as far as human force can effect it, to be entirely cut off. It is intended to suspend the entire commerce of that place, and a neutral is no more at liberty to assist the traffic of exportation than of importation. The utmost that can be allowed to a neutral vessel is, that having already taken on board a cargo before the blockade begins, she may be at liberty to retire with it. But it must be considered as a rule, which this court means to apply, that a neutral ship departing can only take away a cargo *bonâ fide purchased and delivered* before the commencement of the blockade. If she afterwards takes on board a cargo, it is a fraudulent act, and a violation of the blockade." (1 Robinson, 151.) And in the analogous case of *The Frederick Molke*, the same authority remarks:—"For what is the object of blockade? Not merely to prevent an importation of supplies, but to prevent export as well as import, and to cut off all communication of commerce with the blockaded place. There may be cases of innocent egress, where vessels have gone in before the blockade, and under such circumstances it cannot be maintained that they might not be likely to retire. But even then a question might arise if it was attempted to carry out a cargo, for that would, as I have before stated, contravene one of the chief purposes of blockade. A ship then, in all cases, coming out of a blockaded port is, in the first instance, liable to seizure; and to obtain release the

claimant will be required to give a very satisfactory proof of the innocency of his intentions." (1 Robinson, 87.)

During a maritime blockade, a neutral may carry on commerce by means of inland communication. Thus during the blockade of the Russian ports in the Baltic during the war of 1854-6, no Prussian vessel could legally enter the blockaded ports, but Prussian arms and munitions of war in vast quantities were carried into Russia by rail. The reason of this apparent exception to the general rule is, that *there can be no blockade where the blockading power can apply no force.* It is even contended by some publicists that a neutral vessel may enter a port close to the blockaded one, land her cargo, which may then be carried overland to the blockaded place. In case of *The Ocean*, a case arising out of the blockade of Amsterdam, Lord Stowell decided that the blockade of Amsterdam need not be violated by an order from America, as for a shipment to be made at Amsterdam, the actual shipment having been made at Rotterdam; the interior carriage of the goods from Amsterdam to Rotterdam not being within reach of the blockading force. "In what course the cargo had travelled to Rotterdam—where it first became connected with the ship—whether from Amsterdam at all, and if, from Amsterdam, whether by land, carriage or by one of their inland navigations, Rotterdam being the port of actual shipment, I do not think it material to inquire. The legal consequences of a blockade must depend on the means of blockade, and on the actual or possible application of the blockading force. On the land side, Amsterdam neither was, nor could be, affected by a blockading naval force; it could be applied only externally. The internal communications of the country were out of its reach, and in no way subject to its operation." (3 Robinson, 297.)

But no British subject may use any such bye-paths of trade with a port blockaded by British cruisers, even when the transaction is sought to be shielded by a neutral owner. The leading case on this point is *The Jonge Pieter*, a case of goods shipped from London to Embden, with the ulterior purpose of sending

them on to Amsterdam, the goods being claimed on behalf of an American neutral, Lord Stowell said:—"On the first point, supposing the cargo to be American property, I am not inclined to think that it would be affected by the blockade, on the present voyage. The blockade of Amsterdam is, from the nature of the thing, a partial blockade, a blockade by sea; and if the goods were going to Embden, with an ulterior destination by land to Amsterdam, or by an interior canal navigation, it is not, according to my conception, a breach of the blockade. But in the case of a British subject shipping goods to go to the enemy, through a neutral country, I am afraid the penalty would be incurred. Without the license of government no communication, direct or indirect, can be carried on with the enemy. On the policy of that law, this is not the place to observe, it is the law of England; and if any considerations of mercantile policy interfere with it, the duty of the subject is to submit his case to that authority of the country, which can legalize such a trade, looking to all the considerations of political as well as commercial expediency, that are connected with it. But an individual cannot do this; he is not to say, such a trade is convenient, and therefore legal; neither can the court exercise such a discretion. When no rule of law exists, a sense of feeling of general expediency, which is in other words common sense, may fairly be applied. But where a rule of law interferes these are considerations to which the court is not at liberty to advert. In all the cases that have occurred on this question, and they are many, it has been held indubitably clear that the subject cannot trade with the enemy without the special license of government. The interposition of a prior port makes no difference; all trade with the enemy is illegal; and the circumstance that the goods are to go first to a neutral port will not make it lawful. The trade is still liable to the same abuse, and to the same political danger, whatever that may be. I can have no hesitation in saying, that during a war with Holland, it is not competent to a British merchant to send goods to Embden, with a view of sending them forward, on his own account, to a Dutch port, consigned

by him to persons there, as in the course of ordinary commerce." (4 Robinson, 89.)

In the case of *The Maria*, it was decided that a cargo which had been brought *through the mouth of a blockaded river*, for the purpose of being shipped for exportation, was subject to be considered as taken upon *a continued voyage*, and as liable to all the same principles that are applied to *a direct voyage*, of which the terminus *à quo* and the terminus *ad quem*, are precisely the same as those of the more circuitous destination, and that ship and cargo were accordingly liable under the general law to condemnation. (6 Robinson, 201.)

Countries lying in the interior may import and export through an enemy's ports; but the very strictest proof of property is required. In *The Magnus*, a ship laden with coffee and sugars, and captured on a voyage from Havre to Genoa, the vessel having been restored as Danish property, the cargo was claimed as being the property of a merchant at Basle in Switzerland. But Lord Stowell condemned the cargo, on the ground that the owner at Basle, having been trading in French goods without any reference to the wants of his own country, appeared before the court only in the character of a general merchant, interposing to carry on trade between France and Genoa with safety. "Perhaps," remarked the learned judge, "it would not be going too far to say that in Swiss cases it would not be unreasonable to require proof rather of a stricter nature that what is usually deemed sufficient in ordinary cases between maritime nations; and I say this only in reference to the situation in which the Swiss stand in being obliged to trade chiefly through other countries, and often, as in this case, through the ports of the enemy. The privilege of carrying on trade in this manner, in time of war, has been allowed to them in common with some of the interior countries of Germany, in consideration of the hardship that they would sustain were they restricted from becoming merchants for the supply of their own wants, or for the export of the manufactures and native product of their own country. It must, however, on all sides be conceded that on the fairest terms such a trade would

be exposed to great suspicion, and, therefore, we may be justified in requiring more than ordinary proof—not merely a test affidavit but the correspondence of the parties, the orders for purchase, and the mode of payment, satisfactorily making out the claimant's case up to the origin of the transaction. (1 Robinson, 31.)

As has already been remarked a blockade-runner may be captured in any part of her return voyage. But the penalty adheres only during that voyage, and the same vessel could not be captured during a subsequent voyage which, of course, must not be a blockade-running one. "When a vessel enters an interdicted port," said Lord Stowell in the leading case of the *Christiansberg*, "the offence is consummated and the intention is for the first time declared. It is not till the vessel comes out again, that any opportunity is afforded of vindicating the law, and of enforcing the restriction of this order. It is objected that if the penalty is applied to the subsequent voyage, it may travel on with the vessel forever. In principle, perhaps, it might not unjustly be pursued further than to the immediate voyage; but we all know that in practice it has not been carried further than to the voyage succeeding, which affords the first opportunity of enforcing the law." (6 Robinson, 376.)

If she is captured on the return voyage she is set free if the capture was made after the actual discontinuance of the blockade. "The blockade being gone," said Lord Stowell in *The Lisette*, "the necessity of applying the penalty to prevent future transgression cannot continue. It is true that the offence incurred by a breach of blockade generally remains during the voyage, but that must be understood as subject to the condition that the blockade itself continues. When the blockade is raised a veil is thrown over everything that has been done, and the vessel is no longer taken *in delicto*. The *delictum* may have been completed at one period, but it is by subsequent events done away with." (6 Robinson, 395.)

This doctrine of *continued voyages* originated with Lord Stowell, and has never been fully accepted by Continental

publicists. Hautefeuille may be taken as a fair specimen of the Continental writers on this subject, and he contends "that the guilty vessel can only be seized: first, at the moment of violating the blockade, by crossing the part of the sea which has been conquered by the blockading sovereign; secondly, in the road or blockaded port, if the investing forces can enter there, either by taking the port, or by penetrating there by force or stratagem, and carrying off the vessel; and, thirdly, at the moment of attempting to go out, that is to say, when crossing the territory of the nation whose law it has violated, even though the departure in itself should be innocent." (a) Hence, although Hautefeuille admits that the equity of the rule is supported by Bynkershoek, Wheaton, and especially by his countryman Ortolan, and also by "the oracle of the English Admiralty during the war of 1803-14, Sir William Scott, "he objects to what he terms *droit de prevention* and *droit de suite*, that is, to the right of considering as guilty of a violation of blockade every neutral vessel which has sailed for a place declared blockaded after knowledge of the notification, and of regarding *in flagrante delicto*, during the entire return voyage to its port of destination, every vessel which has left a blockaded port.

The ships of half-civilized powers are not permitted to violate a blockade, though in some other points, and to a certain limited extent, the law of nations is relaxed in their favour. In the leading case of *The Hurtige Hane*, which sailed from Saffee, in Morocco, with a cargo for Amsterdam, which was blockaded at that time, with a false destination of Hamburg, Lord Stowell, in condemning the cargo, said:—"It has been argued that it is extremely hard on persons residing in the kingdom of Morocco, if they should be held bound by all the rules of the law of nations, as it is practised among European states. On many accounts, undoubtedly, they are not to be strictly considered on the same footing as European merchants; they may on some points of the law of nations be entitled to a very relaxed application of the

(a) Hautefueille, Droit des Nations Neutres. Tom. II, p. 244.

principles established by long usage between the states of Europe, holding an intimate and constant intercourse with each other. It is a law made up of a good deal of complex reasoning, though derived from very simple rules, and altogether composing a pretty artificial system, which is not familiar either to their knowledge or their observance. Upon such considerations the court has, on some occasions, laid it down that the European law of nations is not to be applied in its full rigour to the transactions of persons of the description of the present claimants, and residing in that part of the world. But on a point like this, the breach of a blockade, one of the most universal and simple operations of war in all ages and countries, excepting such as were merely savage, no such indulgence can be shown. It must not be understood by them that if a European army or fleet is blockading a town or port, they are at liberty to trade with that port. If that could be maintained, it would render the operations of a blockade perfectly nugatory. They, in common with all other nations, must be subject to this first and elementary principle of blockade, that persons are not to carry into the blockaded port supplies of any kind. It is not a new operation of war; it is almost as old and as general as war itself." (3 Robinson, 324.)

Neutral merchants are not permitted to cover enemy's goods with other goods belonging to themselves in the same ship. Thus in condemning *The Eenrom*, a Danish ship, which had sailed from Copenhagan to Batavia with a cargo of tar, sail cloth, sheathing copper, and other articles contraband of war under treaty between Great Britain and Denmark, and captured on the return voyage with a cargo of which half at least was proved to be Dutch property, though collusively alleged to be Danish, Lord Stowell said:—"The regular penalty of such a proceeding must be confiscation; for it is a rule of this court which I shall ever hold, till I am better instructed by the Superior Court, that if a neutral will weave a web of fraud of this sort, this court will not take the trouble of picking out the threads for him in order to distinguish the sound from the unsound; if he is de-

tected in fraud, he will be involved *in toto*. A neutral surely cannot be permitted to say, 'I have endeavoured to protect the whole, but this part is really my property; take the rest, and let me go with my own.' If he will engage in fraudulent concerns with other persons they must all stand or fall together." (2 Robinson, 9.)

Swift and speedy justice was rendered to blockade-runners in the olden time. Thus Vattel tells us that "King Demetrius hung up the master and pilot of a vessel carrying provisions to Athens when he had almost reduced that city by famine." (a) Even Martens, late in the eighteenth century, was of opinion that corporal punishment—the cat no doubt—could be dealt out to captured blockade-runners, but the law of nations does not now sanction such harsh treatment.

The penalty of blockade-running is confiscation, usually by sentence of a prize court, and as the vessel is the immediate agent of the offence the penalty falls first on it. Lord Stowell, in the leading case of *The Welvaart Van Pillau*, remarks:—It s unnecessary for me to observe, if a ship that has broken a blockade is taken in any part of the same voyage, she is taken *in delicto*, and subject to confiscation." (2 Robinson, 128.) And, again, in the case of *The Columbia*, the same eminent authority observed:—"The breach of a blockade subjects the property so employed to confiscation. There is no rule of the law of nations more established than this. Among all the contradictory positions that have been advanced in the law of nations, this principle has never been disputed; it is to be found in all books of law, and in all treaties; every man knows it; the subjects of all states know it, as it is universally acknowledged by all governments who possess any degree of civil knowledge." (1 Robinson, 154.)

Then the voyage was undertaken on account of the goods on board, so the cargo shares in the guilt of a blockade-running and, consequently, of its penalty.

(a) Op. cit., B. III, ch. VII, §117.

But the owners of the cargo may not be the owners of the vessel, and, therefore, an important distinction must be drawn. If the same parties own both vessel and cargo, then both are forfeited, for the master is held to be agent for the owners and binds them by his misconduct. If the owners of the vessel are not the owners of the cargo, then the latter is not forfeited, unless indeed the owners of the cargo knew, *or ought to have known*, of the existence of the blockade. In the case of *The Mercurius*, Lord Stowell said:—"To maintain that the conduct of the ship will affect the cargo, it will be necessary either to prove that the owners were, or might have been, cognizant of the blockade, before they sent their cargoes, or to show that the act of the master of the ship personally binds them. In America there could not have been any knowledge of the blockade. The cargo is innocent in its nature, and sets out innocently; the master certainly is the agent of the owner of the vessel, and can bind him by his contract or by his misconduct; but he is not the agent of the owners of the cargo, unless expressly so constituted by them. In cases of insurance and in revenue cases, where it is said the act of the master will affect the cargo, it is to be observed that the ground on which they stand is wholly different. In the former it is in virtue of an express contract which governs the whole case; and in revenue cases it proceeds from positive laws, and the necessary strictness of all fiscal regulations.

"It is argued that to exempt the cargo from this responsibility will open the door to fraud, if neutrals are allowed to attempt to trade to blockaded ports with impunity, by throwing the blame upon the carrier master; but if such an artifice could be proved, it would establish that *mens re* in the neutral merchant, which would expose his property to confiscation; and it would, at the same time, be sufficient to cause the master to be considered in the character of agent, as well for the cargo as for the ship. Where a cargo is of a contraband nature, it will, perhaps, justify greater severity; but in cases of contraband it is held that innocent parts of the cargo belonging to other owners shall not be infected." (1 Robinson, 80.)

Phillimore remarks that, "it would seem, though the point is perhaps not quite clear, that in these cases in which the owners of the ship and cargo are divers persons, that the burden of proving the guilt of the cargo lies upon the claimant." (a) Wheaton, on the other hand, holds that the owners of the cargo are concluded by the act of the master, even though the breach of the blockade was without their privity, or contrary to their wishes" (b), which certainly seems most harsh and inequitable. For, though the master is agent for the owners of the vessel, he is not necessarily the agent for the owners of the goods on board, unless such authority has been expressly given by them; and if he had no such authority it seems inequitable to punish the owners of cargo for the delict of the master. At the present day the cargo would probably be restored if the owners could prove that they were not implicated in the blockade-running, but the proof would always be difficult and often impossible. Lord Stowell's opinion is that the proofs of innocence must be found on board at the time of the capture and *not* supplied afterwards. In giving judgment in the case of *The Exchange*, his Lordship remarked: —"The cases cited, which are familiar to us all, were cases of a supervening illegality, where it was shown that the owner of the cargo stood clear of any possible intention of fraud, and *that* by proofs found on board at the time of the capture, and not supplied afterwards. For instance, where orders have been given for goods prior to the existence of blockade, and it appeared that there was not time for countermanding the shipment afterwards, the court has held the owner of the cargo not responsible for the act of the enemy's shipper, who might have an interest in sending off the goods in direct opposition to the interest of his principal. And the same indulgence has been exercised where there was no knowledge of the blockade till after the ship had sailed, and the master, after receiving the information, obstinately persisted in going on to the port of his original destination." (Edwards, 43.)

(a) Op. cit., CCCXVIII.
(b) Op. cit., § 519b.

But in the famous case of *The Columbia*, Lord Stowell seems to hold that the penalty of breaking a blockade attaches to the property of persons ignorant of that fact, by the misconduct of the master, or of the consignee, *if intrusted with power over the vessel and cargo.* Lord Stowell said : "This vessel came from America, and, as it appears, with innocent intentions on the part of the American owners, for it was not known at that time in America that Amsterdam was in a state of investment. The master by his instructions was to go to Hamburg, and put himself under the direction of Messrs. Boué & Co. They, therefore, were to have the entire dominion over this ship and cargo. We have this fact, then, when the master sailed from Hamburg to Amsterdam, the blockade was perfectly well known, both to him and the consignees; but their design was to seize the opportunity of entering whilst the winds kept up the blockading force at a distance. Now, under these circumstances, I have no hesitation in saying that the blockade was broken. The blockade was to be considered as legally existing, although the winds did occasionally blow off the blockading squadron. It was an accidental change which must take place in every blockade, but the blockade is not, therefore, suspended. The contrary is laid down in all books of authority, and the law considers an attempt to take advantage of such an accidental removal as an attempt to break the blockade, and as a mere fraud." (1 Robinson, 154.) In this case the American owners would have a right to look to Messrs. Boué & Co., and also to the delinquent master, for indemnification. But how would it be if the master and consignees had *not* had dominion over the cargo, but attempted a breach of blockade against the express orders of the owners? Then, in all probability, Phillimore's equitable rule would be acted on, and the owners of the cargo would *not* be concluded by the act of the master.

It may happen that the owners of the cargo were the guilty parties while the owners of the vessel were innocent, and, moreover, able to prove their innocence; in such cases the cargo would be confiscated and the ship set free. In condemning the cargo of

The Jungfrau Maria Schræder, Lord Stowell said :—"This ship was restored on the ground that having, though by an improper indulgence, been allowed to go in with a cargo, she might be understood to be at liberty to come out with a cargo. The ship was restored, but it by no means follows that the owners of the cargo stand on the same footing. That may have been shipped in consequence of criminal orders directing it to be sent on any opportunity of slipping out. It is, therefore, not to be argued that the release of the ship is any conclusive evidence respecting the cargo. An absolute order during the continuance of the blockade, if executed, must be considered to be a breach of the blockade; nor do I think that a provisional order, directing shipments to be made when the blockade should be raised will avail for indulgence, should the blockade actually exist when the order is carried into execution. The owners must take upon themselves to answer for the undue execution of the order, and make the shippers answerable to them. If this rule was not adopted, there would be no end of shipments made during a blockade, whilst there would be nobody at all responsible for such acts of misconduct." (3 Robinson, 147.)

The judgment in case of *The Jungfrau Maria Schræder* illustrates another law of blockade which originated with Lord Stowell, namely, that it is not necessary that the captor should assign any reason to the master of the offending vessel. "He takes at his own peril, and on his own responsibility, to answer in costs and damages, for any wrongful exercise of the rights of capture. At the same time it may be a matter of convenience that some declaration should be made, because it is possible, that if the grounds are stated, it may be in the power of a neutral master to give such reasons as may explain away the suspicion that is suggested." (3 Robinson, 152.)

Lastly, in the case of *The Elsebe*, Lord Stowell decided that, if the master of a vessel, at the time of sailing, put his ship under armed convoy, whose instructions he is presumed to know, the act is illegal, and binds both ship and cargo. (5 Robinson, 173.)

INDEX.

D.

E.

F.

G.

H.

I.

M.

N.

O.

P.

S.

T.

U.

V.

W.