

being brought in for adjudication and the danger of being condemned in costs and expenses under Article 41.

The freedom of the belligerent in respect of the capture of contraband is therefore left quite unimpaired, and the provisions as to condemnation are not such as to encourage ship-owners to lightly embark in the trade of carrying contraband.

#### DESTRUCTION OF NEUTRAL PRIZES.

The view hitherto taken by this country and its Prize Court has been that a belligerent should not destroy a neutral vessel (putting aside special cases such as unseaworthiness) captured for the carriage of contraband, but that, if for any reason he cannot bring the vessel in for adjudication, he should, as a general rule, let her go free.

This was not the view of some Powers, who consider that the law of nations renders it permissible to destroy such vessels in cases where it is not possible, without inconvenience, to bring them in, provided that the papers are brought in and the crews and passengers taken off and safely bestowed.

Attempts were made, both at the Hague Conference and at the Naval Conference of London, to obtain recognition of our principle, but without success, and, failing any concession on our part, things must have remained as they were, and, as I think can be shown, in a position far more to our disadvantage as neutrals, than that which would be created by the Declaration of London.

The Powers that claim the right to destroy would still destroy, and neutrals would suffer without any redress except in the Prize Courts of the belligerent, which would necessarily adjudicate in accordance with their view of the law of nations, so that no remedy but the threat of war would remain to the neutral State whose nationals had suffered.

If the destruction were, in the opinion of the Court, justified, and the contraband character of the cargo established, there would be no compensation or redress for the neutral trader.

On the other hand, when we were belligerent, we should apply the rule we recognise, and if one of our war-ships destroyed a neutral (as might be necessary in the future, as it has been in the past) we should have to pay full compensation to the neutral owners of ship and cargo.

This is the existing situation which it is considered so important to preserve.

It is said the Declaration gives a right to destroy which did not previously exist. That right was claimed and might be exercised to our detriment, practically without check, while, if exercised, we were without redress.

Under the Declaration what has been done is not to give more licence to destruction, but to limit the exercise of the power, and to provide certain redress in nearly all cases for those injured thereby. The sinking of the "Knight Commander" in the Russo-Japanese war affords a modern instance of the exercise of the right, and illustrates the difficulty of obtaining redress when the neutral nation affected is not willing, or not in a position, to carry its grievance to the arbitrament of war.

There must occasionally be circumstances under which it would be the plain duty of a naval officer to destroy a neutral which he could not take in, and, as things at present stand, we should pay when we were belligerent and should probably get no redress when we were neutral.

This aspect of the case was considered by Lord Stowell, and I quote from passages in his judgments:—

"Actæon," 2 Dodson, 54 :

"Lastly, it has been said that Captain Capel could not spare men from his own ship to carry the captured vessel to a British port, and that he could not suffer her to go into Boston, where she would have furnished important information to the Americans. These are circumstances *which may have afforded very good reasons for destroying the vessel and may have made it a very meritorious act in Captain Capel so far as his own Government is concerned*, but they furnish no reason why the American owner should be a sufferer. . . . I think, therefore, that he is entitled to receive the fullest compensation."

It should perhaps be stated that this was a case of an enemy vessel trading under a British licence, and thus for the purposes of her voyage not to be treated as an enemy but as though she were a neutral.

"Felicity," 2 Dodson, 386 :