

“ When it is neutral the act of destruction cannot be justified to the neutral owner by *the gravest importance of such an act to the public service of the captor's own State*. To the neutral it can only be justified under any such circumstances by a full restitution in value.”

I also quote some observations of Dr. Lushington in giving judgement in the case of the “ Leucade ” in 1855 (2 Spinks, 231) :—

“ It is the right of the neutral to be brought in to adjudication. . . . No excuse for (the captor) as to inconvenience or difficulty can be admitted between captors and claimants. . . . *If the ship be destroyed for reasons of policy alone, as to maintain a blockade or otherwise, the claimant is entitled to costs and damages.*”

There can be no doubt as to what these decisions mean—namely, that national exigencies may require a Naval Commander in exceptional circumstances to destroy a neutral prize—but that, if he does so, the neutral must be fully compensated, regardless of the question whether the ship was or was not liable to condemnation.

Shortly, our rule is that if a neutral prize cannot be brought in she shall be released. If military necessity renders this impracticable, and she is destroyed, full compensation must be made to all neutrals whose property is destroyed, or who are injured by the destruction.

Other nations in theory accept the general principle, but these tendencies are unfavourable to our view and favourable to their interests as belligerents. They also say that in principle neutral prizes should not be destroyed—they also say that in exceptional circumstances this rule must be departed from, but they claim that if the ship destroyed turns out to have been liable to condemnation, neutral owners of ship or contraband have no right to compensation.

For us as neutrals there is therefore at present no recognised remedy in respect of the destruction, and the right to compensation depends on the judgement of the belligerent Prize Court as to whether the ship was liable to condemnation. The conditions justifying destruction are prescribed by no rules of International Law—this is a matter for the Naval Commander; and the right to compensation depends on whether the belligerent's Prize Courts find the ship was or was not liable to condemnation while the decision is subject to no review by an independent tribunal.

We on the other hand, as belligerents, if we destroy should in all cases pay compensation. As neutrals we may receive nothing—as belligerents we always pay. The Declaration in fact recognises nothing which did not exist—and to a large extent remedies the disadvantage at which we are now placed.

Further, it is important to note that, however closely our principle may approximate to that of other nations, their tendency, as illustrated by the Russo-Japanese War, is to apply the exceptional claim to destruction more freely than would be permitted to our commanders—both because we assert the general principle more strongly than they do, and should limit more strictly the conditions under which destruction was permissible, and because, owing to our possession of ports in all parts of the world, we should have, in fact, less temptation to destroy.

It must, therefore, be in our interest to lay down conditions which more precisely limit the right to destruction, and place us on terms of equality with our possible opponents in war, and also give us as neutrals the same terms as we should give to neutrals when we were belligerents.

This is what the Declaration endeavours to effect, and, with the sole exception that it does not necessarily involve compensation in all possible cases, has, as I contend, effected. It gives no new right to destruction at all, but regulates a right that is claimed and exercised, and will be claimed and exercised not unfrequently against us, and occasionally by ourselves, whatever general principles may be laid down. I do not think any naval officer, or any Admiralty, would question this proposition.

What is provided by these conditions of the Declaration? “ Safety of ship or success of operations.” Can it be supposed that in such cases any commander would release a neutral ship which he could not bring in, if the effect would be to imperil his ship or fleet, or affect operations which might be absolutely vital?